

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**SUNQUEST PROPERTIES, INC. and
CARRIAGE HOUSE APARTMENTS
PARTNERSHIP,**

PLAINTIFFS

v.

Civil Action No. 1:08-CV-687-LTS-RHW

**NATIONWIDE PROPERTY AND
CASUALTY INSURANCE COMPANY
and JOHN DOES 1-5,**

DEFENDANTS

**SUPPLEMENT TO NATIONWIDE'S REPLY IN SUPPORT OF
MOTION FOR SANCTIONS**

Defendant Nationwide Property and Casualty Insurance Company submits this Supplement to Nationwide's Reply in Support of Motion for Sanction in light of new evidence that shows Plaintiffs' prior representations to the Court were false. In support thereof, Nationwide states as follows:

1. Nationwide filed its Motion for Sanctions on December 10, 2009 and filed a reply memorandum in support of its Motion on December 22, 2009.

2. In their Opposition to Nationwide's Motion, Plaintiffs represented that, "[a]s shown by the agreements and billing records between Mr. O'Leary and Insureds, Insureds have always paid Mr. O'Leary on an hourly basis" and that "Mr. O'Leary has no financial stake in the outcome of this matter." (Dec. 16, 2009 Mem. in Opp. to Mot. for Sanctions at 4, 5 [Dkt. 226].) Plaintiffs further represented that "Mr. Brockman did not misrepresent the nature of Mr. O'Leary's engagement [and] neither Mr. O'Leary nor Mr. Brockman misrepresented the number of drafts of Mr. O'Leary's expert report." (*Id.* at 10.)

3. However, recent deposition testimony from both Mr. Brockman and Mr. O'Leary in the other matter being litigated between these parties demonstrates the deceptiveness of these representations. Indeed, Mr. O'Leary and Sunquest representative Ralph Brockman have now

EXHIBIT A

expressly admitted under oath that their prior testimony and Plaintiffs' representations to the Court were false by acknowledging that *Mr. O'Leary and Mr. Brockman entered into a contingency fee arrangement that was in effect for a full year — during which time Mr. O'Leary prepared his estimates and expert report — until Plaintiffs' counsel told them it was "not legal."* (See Jan. 19, 2010 Deposition of Ralph Brockman, *Sunquest Properties, Inc. & Compass Pointe Apartments Partnership v. Nationwide Prop. and Cas. Ins. Co.*, 1:08-CV-692-LTS-RHW, at 37, 40 (explaining that Mr. O'Leary operated under contract entitling him to 4% of Plaintiffs' claim until purportedly superseded by mid-litigation September 22, 2009 agreement) (Ex. 49);¹ Jan. 15, 2010 Deposition of Lewis O'Leary, *Compass Pointe*, at 240 (discussing contract terms) ("Q. And four percent of whatever the final award is, whether it's \$1,000,000, \$5,000,000, \$10,000,000 or \$20,000,000; correct? A. Yes.") (Ex. 50); *id.* at 245 ("Q. But if there was an award of \$10,000,000, you would get four percent; correct? A. ***During that particular period of time there was a percentage agreement.***"); *id.* at 237-38 ("Q. And this represents the agreement that you had in place up until the lawyers told you you can't have this agreement; is that right? A. That's right. Q. And that took place sometime last fall, correct? A. I think so. Q. By 'last fall,' I mean September of 2009, correct? A. That sounds about right."))

4. As Mr. Brockman further admits, contrary to Plaintiffs' representations that he had been truthful in his prior sworn testimony, Mr. Brockman now admits that his testimony on this point was untrue:

Oct. 20, 2009 Deposition of Ralph Brockman <i>Carriage House v. Nationwide</i> at 173 (Ex. 2)	Jan. 19, 2010 Deposition of Ralph Brockman <i>Compass Pointe v. Nationwide</i> at 65-66
<i>Q. Well, prior -- did you have a different compensation arrangement with Mr. O'Leary prior to filing this lawsuit?</i>	Q. I had asked you ... did you have a different compensation arrangement with Mr. O'Leary prior to filing this lawsuit [and

¹ Exhibits 1-48 are attached to Nationwide's Motion for Sanctions. Exhibits 49-50 are attached hereto.

<p><i>A. No.</i></p> <p>Q. So --</p> <p>A. It's been the same all the way through.</p> <p>Q. -- when you first began working with him at some point in 2007, it's always been on an hourly basis --</p> <p>A. Yes.</p> <p>Q. -- without any contingent --</p> <p>A. ... <i>[T]he arrangement for payments was the same. It was by the hour.</i></p>	<p>you] answer[ed] no. Did I read all of that correctly?</p> <p>A. Yes.</p> <p><i>Q. When you made that statement under oath that time that was untrue right Mr. Brockman?</i></p> <p><i>A. That's correct.</i></p>
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5. Additional testimony reveals that, contrary to Mr. O'Leary's report, (*see* June 29, 2009 Expert Report of Lewis O'Leary at 6 (Ex. 5)), and to Plaintiffs' persistent claims that Mr. O'Leary "was always paid by the hour," (Mem. in Opp. to Mot. for Sanctions at 4 [Dkt. 226]), ***Mr. O'Leary has been issued multiple "milestone" payments as an "advance" on his entitlement to 4% of Plaintiffs' claim.*** (*Compare* O'Leary Compass Pointe Dep at 246-47; *id.* at 251-52 ("Q. This invoice, that we're looking at here, does not show any kind of hourly component? A. That -- that is correct. It does not. You're absolutely right."); *with* Jan. 12, 2010 Pls.' Mem. in Opp. to Mot. to Strike O'Leary as Litigation Expert at 2 [Dkt. 235] (misrepresenting that all payments to Mr. O'Leary have been "based on Mr. O'Leary's contract price of \$200 per hour").)

6. Additionally, Plaintiffs represented that an extension of the discovery deadline to permit Mr. O'Leary to create new wind damage estimates would avoid prejudice to Nationwide and delay of the trial. (*See* Mem. in Opp. to Mot. for Sanctions at 2.) Yet ***Plaintiffs' promises of a grossly out-of-time, mid-January completion of new wind estimates for litigation purposes***

remained unfulfilled at the time of Mr. O'Leary's January 15 deposition. (See, e.g., Mem. in Supp. of Mot. for Extension of Time to Complete Discovery and Supplement Expert Reports at 2 (“These reports will be completed by mid-January 2010.”).) Contrary to Plaintiffs’ claim that the new estimates “completed [Mr. O’Leary’s] findings,” (Pls.’ Mem. in Opp. to Mot. to Strike O’Leary as Litigation Expert at 8), according to Mr. O’Leary it is nothing more than a “preliminary,” mixed wind/flood estimate that he prepared for purposes of appraisal. (See O’Leary Dep, *Compass Pointe*, at 24, 148.)² In fact, Mr. O’Leary admitted that at the time of his deposition he still lacked “another set for the trial that’s just wind only,” because he “just ha[sn’t] had time to mess with that.” (See *id.* at 146.)³ Since even Plaintiffs’ self-appointed, out-of-time deadline for completing new reports and the completion of Mr. O’Leary’s deposition in this matter passed without new estimates related to this litigation, Plaintiffs’ promise of a new expert report can no longer serve as an argument against the sanctions sought by Nationwide.

7. Nationwide continues to believe that the imposition of sanctions is appropriate, and files this supplement to provide the Court with all available facts which may be relevant to the Court’s decision.

WHEREFORE, PREMISES CONSIDERED, Nationwide respectfully requests that this Court grant its Motion for Sanctions and enter an order dismissing this action with prejudice or granting the alternative relief requested.

² Mr. O’Leary testified that he had undertaken the same “wind and flood” supplemental estimate for the appraisal process in the Carriage House lawsuit as well, and did not have revised “wind-only” estimates for that case either. See also *id.* at 148-49 (“Q. Okay. And am I correct that for Carriage House those new estimates are the same thing, they’re wind and flood? A. Yes, sir. Q. Okay. And those too are also for the appraisal process? A. Yes, sir. Q. And if you wanted to present something to the court or to the jury that was solely wind damage, you’d have to deconstruct your newest ones in some way to break out wind versus flood? A. Yes, sir. **Q. Do you have a plan to do that? Have you been asked to do that?** A. *It’s something that’s on the list of things to do. Yes, sir. Q. But as we sit here right now you don’t have that?* A. No, sir.”).

³ Plaintiffs produced what purport to be supplemental “wind-only” estimates for the Compass Point lawsuit on January 25, ten days after Mr. O’Leary’s deposition in this matter and the day before Nationwide was to depose Mr. O’Leary’s estimator, Jerry Wiggins. Nationwide reserves all rights regarding these supplemental “wind-only” estimates, including specifically the right to move to strike and exclude them from use in this matter.

THIS, the ____ day of January, 2010.

Respectfully submitted,

NATIONWIDE PROPERTY & CASUALTY
INSURANCE COMPANY, DEFENDANT

By Its Attorneys

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CERTIFICATE OF SERVICE

I certify that I have this day electronically filed the foregoing using the Court's ECF system, which sent electronic notification of such filing to:

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Ralph Brockman 1/19/2010

Page 1

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

SUNQUEST PROPERTIES, INC.
AND CARRIAGE HOUSE
APARTMENTS PARTNERSHIP,
INC.

PLAINTIFFS

V. CASE NO. 1:08-CV-687-LTS-RHW

NATIONWIDE PROPERTY AND
CASUALTY INSURANCE
COMPANY AND JOHN DOES 1-5

DEFENDANTS

DEPOSITION OF RALPH BROCKMAN

Taken at the instance of the Defendants at Watkins
Ludlam, Gulfport, Mississippi, on Thursday, January
19, 2009, beginning at 9:04 a.m.

APPEARANCES:

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COUNSEL FOR PLAINTIFF

Ralph Brockman 1/19/2010

<p style="text-align: right;">Page 2</p> <p>1 ROBERT GILMORE, ESQ. Kirkland & Ellis 2 655 15th Street, N.W., Suite 1200 Washington, DC 20005</p> <p>3 4 MICKY COWAN, ESQ.(VIA TELEPHONE) Watkins Ludlam 5 Post Office Box 427 Jackson, Mississippi 39205</p> <p>6 7 8 COUNSEL FOR DEFENDANT</p> <p>9 10 11 VIDEOGRAPHER: LYNDA MARSHALL</p> <p>12 13 14 15 16 17 18 19 20 21 22 23 REPORTED BY: Robin G. Burwell, CSR #1651 Brooks Court Reporting, Inc. 24 12 Lakeland Circle, Suite A Jackson, Mississippi 39216</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 Exhibit 327 - 1/26/2008 Memo.....53 2 Exhibit 329 - March 17 E-mail.....59 3 Exhibit 330 - 4/9/2008 E-mail.....62 4 Exhibit 180 - Deposition of Ralph Brockman, Carriage 5 House Case.....64 6 Exhibit 125 - 9/29/2005 Fax.....66 7 Exhibit 478 - 12/29/2006 Complaint.....68 8 Exhibit 479.....72 9 Exhibit 481 - E-mail.....72 10 Exhibit 480 - E-mail.....73 11 Exhibit 421 - 9/23/2005 E-mail.....75 12 Exhibit 477 - Declaration.....79 13 Exhibit 1 - Policy.....86 14 Exhibit 314 - 9/23/2005 Letter.....118 15 Exhibit 316 - 11/15/2005 Letter.....125 16 Exhibit 185 - 12/4/2005 Letter.....129 17 Exhibit 198 - Document re: Upward Revision .130 18 Exhibit 157 - Damages Paid.....133 19 Exhibit 139 - 12/8/2006 Warranty Deed.....136 20 Exhibit 141 - Corrected Warranty Deed.....138 21 Exhibit 310 - Closing Statement.....140 22 Exhibit 424 - 4/24/2006 Letter.....143 23 Exhibit 468 - Buy/Sell Agreement.....148 24 Exhibit 466 - 8/18/2006 Letter.....149 25 Exhibit 467 - 10/29/2006 Letter.....156</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX 2 Style and Appearances.....1 3 Index.....3 4 Certificate of Deponent.....230 5 Certificate of Reporter.....231</p> <p>6 7 EXAMINATIONS 8 Examination By Mr. Gilmore6</p> <p>9 10 EXHIBITS 11 Exhibit 475 - Notice of 30(b)(6) Deposition.7 12 Exhibit 263 - 6/29/2009 Probuilders Report..10 13 Exhibit 335 - Engagement Letter.....12 14 Exhibit 324 - Engagement Letter.....12 15 Exhibit 328 - 2/24/2008 E-mail.....17 16 Exhibit 331 - 4/7/2008 E-mail.....25 17 Exhibit 323 - E-mail.....31 18 Exhibit 337 - 8/20/2008 Revised Service 19 Agreement.....35 20 Exhibit 338 - Revised Service Agreement.....35 21 Exhibit 336 - 8/28/2008 Engagement Agreement for a 22 Commercial Property.....42 23 Exhibit 339 - 9/22/2009 Letter.....42 24 Exhibit 361 - File, Compass Pointe Carriage 25 House.....48</p>	<p style="text-align: right;">Page 5</p> <p>1 Exhibit 296 - Amended Complaint.....159 2 Exhibit 297 - Plaintiffs' Responses to Nationwide's 3 Interrogatories and Request For Production..173 4 Exhibit 300 - Plaintiffs' Answers to Defendants' 5 Second Set of Interrogatories.....184 6 Exhibit 304 - Answer to Interrogatory 7 Number 28.....186 8 Exhibit 303 - Answer to Interrogatory 9 Number 25.....194 10 Exhibit 483 - 12/31/2005 Balance Sheet and Income 11 Statement.....200 12 Exhibit 484.....209 13 Exhibit 485 - Handwritten Notes.....215</p> <p>14 15 16 17 18 19 20 21 22 23 24 25</p>

Ralph Brockman 1/19/2010

Page 6	Page 8
<p>1 VIDEOGRAPHER: This is the video 2 deposition of Ralph Brockman taken by counsel for 3 the defendant in the matter of Sunquest Properties, 4 et al. versus Nationwide Insurance, et al., in the 5 United States District Court, Case Number 6 1:08CV687-LTS-RHW, held in the office of Watkins 7 Ludlam on Tuesday, January 19th, 2010. It is now 8 9:10 a.m. Counsel may introduce themselves. 9 MR. GILMORE: Robert Gilmore, Kirkland & 10 Ellis, LLP, on behalf of Nationwide Property 11 Casualty Insurance Company. 12 MR. GAUDET: Nathan Gaudet for the 13 plaintiffs, Sunquest Properties, Inc. and Compass 14 Pointe Apartment Partnership. 15 MR. COWAN: Micky Cowan on behalf of 16 Nationwide Property and Casualty Insurance. 17 VIDEOGRAPHER: Court reporter will now 18 swear in the witness. 19 RALPH BROCKMAN, 20 Having been first duly sworn, was examined and 21 testified as follows: 22 EXAMINATION BY MR. GILMORE: 23 Q. Good morning, Mr. Brockman. We've met 24 before. Again, my name is Rob Gilmore. I'm with 25 Kirkland & Ellis representing Nationwide. We're</p>	<p>1 something personally that doesn't have to do with 2 partnership, I'll make sure I let you know that's 3 what I'm doing. Okay? 4 A. Yes. 5 Q. I know you've been deposed before. Just 6 run through the ground rules real quick. It's my 7 job to ask you questions that you understand. Okay? 8 A. Yes. 9 Q. If I ask a question that you don't 10 understand, please let me know. I'll try and 11 rephrase it so that it makes sense; is that fair? 12 A. Yes. 13 Q. If you answer my question, I'm going to 14 assume that you understood my question. Okay? 15 A. Yes. 16 Q. And you just nodded. Since it's being 17 recorded and transcribed, if you can give verbal 18 responses rather than head shakes or "uh-huh" 19 (affirmative response). Give "yes" or "no." We'll 20 save the court reporter here a lot of heartache; is 21 that fair? 22 A. That's fair. 23 Q. You may recall the last time we had 24 deposition for Carriage House Property, numerous 25 times you and I both were speaking over each other.</p>
Page 7	Page 9
<p>1 here today on the second two losses you brought 2 regarding Compass Pointe Apartments. 3 I am going to hand you what's been 4 pre-marked as Defense Exhibit 475, which is the 5 notice of your 30(b)(6) video deposition today. 6 (Exhibit 475 - Notice of 30(b)(6) 7 Deposition marked for identification.) 8 Q. Have you seen this document before, sir? 9 A. I believe so, yes, sir. 10 Q. You understand this lists several topics 11 for which Nationwide has asked plaintiffs to present 12 a representative to testify on? 13 A. Yes. 14 Q. Are you prepared to testify regarding the 15 topics that are listed in Defense Exhibit 475? 16 A. Yes. 17 Q. You're testifying today on behalf of 18 Compass Pointe Apartments Partnership, right? 19 A. Yes. 20 Q. Now, for today's deposition, if I'm asking 21 you a question, I want you to assume that I am 22 asking a question that calls for information for you 23 to give on behalf of the partnership; is that fair? 24 A. Yes. 25 Q. If at any point I want to ask you</p>	<p>1 That happens during depositions a lot. But if you 2 can just try and let me finish my question, give 3 Mr. Gaudet here an opportunity to object if he wants 4 to, and give your response. Again, that will make 5 it a lot easier for the court reporter here who's 6 trying to transcribe everything; is that fair? 7 A. Yes. 8 Q. Is there any reason why you can't give 9 truthful and accurate testimony here today? 10 A. No. 11 Q. And you'll see looking at Defense 12 Exhibit 475, Topic 4 deals with, "Any and all 13 dealings, communications, or correspondence with 14 WorldClaim's adjuster Lewis O'Leary, Jerry Wiggins, 15 Todd Skinner, Michael Fusco, Lisa Phillips, 16 Donna Bass, Tammy Crossley, Susan Belk, 17 Timothy Brandon, Meleah Jones, Greg Stewart, or any 18 other individual or entity retained or consulted by 19 the partnership and/or Sunquest regarding the damage 20 or losses sustained by Compass Pointe as a result of 21 hurricane Katrina or any insurance claim filed by 22 the partnership as a result of hurricane Katrina." 23 Did I read that correctly? 24 A. Yes. 25 Q. I want to start with that topic today.</p>

3 (Pages 6 to 9)

Ralph Brockman 1/19/2010

<p style="text-align: right;">Page 10</p> <p>1 specifically with respect to Compass Pointe and your 2 dealings with Lewis O'Leary. 3 (Exhibit 263 - 6/29/2009 Probuilders 4 Report marked for identification.) 5 Q. Let me hand you what's been marked as 263, 6 which is a June 29, 2009 report from Probuilders, 7 Lewis O'Leary's company, concerning the Compass 8 Pointe Apartments property. This report was 9 produced to Nationwide by plaintiffs. Have you seen 10 this document before? 11 A. Yes. 12 Q. You recognize this as Mr. O'Leary's expert 13 report for the Compass Pointe case? 14 A. Yes. 15 Q. You seen any other versions of this 16 report? 17 A. From Probuilders? 18 Q. Yes, from Probuilders or Lewis O'Leary. 19 A. No, not that I recall. 20 Q. Do you know whether plaintiffs had an 21 opportunity to review it and ensure that it was 22 accurate prior to it being conveyed to Nationwide? 23 A. I didn't understand that. Do I know if 24 plaintiff? 25 Q. Yes. I'll rephrase it. Did plaintiffs</p>	<p style="text-align: right;">Page 12</p> <p>1 is \$35 per hour and expenses are billed at cost." 2 Did I read that correctly? 3 A. Yes. 4 Q. Sitting here today, do you know whether 5 that was an accurate statement at the time 6 Mr. O'Leary made it on June 29th, 2009 report? 7 A. Yes. 8 Q. Was it, in fact, an accurate statement to 9 your knowledge? 10 A. Yes. 11 (Exhibit 335 - Engagement Letter marked 12 for identification.) 13 (Exhibit 324 - Engagement Letter marked 14 for identification.) 15 Q. I hand you what's been marked as Defense 16 Exhibit 335 and 324. Let's start with 335, which is 17 a document produced by plaintiffs, Bates numbered 18 CH 1157. Have you seen this document before, sir? 19 A. Yes. 20 Q. Can you tell us what this document is? 21 A. D-335? 22 Q. Yes, Defense 335. 23 A. It's -- it's a document between Carriage 24 House, which puzzles me. I thought this was 25 addressing Compass Pointe. But it is an engagement</p>
<p style="text-align: right;">Page 11</p> <p>1 review this report to ensure that it was accurate 2 and truthful prior to providing it to Nationwide? 3 MR. GAUDET: Object to the form. Little 4 vague as far as the meaning of "accuracy." 5 Q. You understand the word "accurate," sir? 6 A. Yes. I understand the word "accurate." 7 Did I review this before it was submitted if I 8 understand the question. 9 Q. Right. You or anyone on behalf of 10 plaintiffs review it to ensure it was accurate, as 11 you use that word, prior to it being given to me? 12 A. Yes. I'm certain that he submitted it to 13 me before Nationwide. 14 Q. As we sit here today, are you aware of any 15 errors, inaccuracies, or misstatements in Defense 16 Exhibit 263, Mr. O'Leary's report for Compass 17 Pointe? 18 A. No, I am not. 19 Q. Turn to the last page of the report. 20 You'll see the page numbers at the top, Page 7 on 21 Defense Exhibit 263. You'll see there's a second 22 heading there postscript. Second bullet point 23 reads, "My compensation for this assignment has been 24 the payment of \$200 per hour for actual consulting 25 and \$100 per hour for my travel time. Secretarial</p>	<p style="text-align: right;">Page 13</p> <p>1 agreement, consulting agreement as I understood it, 2 with Probuilders represented by Lewis O'Leary to -- 3 you'd have to read it. It gives you the outline of 4 what he is to do in this engagement as a consultant, 5 an overview of it or summary. It's just to see and 6 research the claim itself to see if it's justifiable 7 claim, as I recall it. 8 He got a retainage of \$3,000 deposit on 9 each of these engagements. It's one with Compass 10 Pointe. There's a different one with Carriage 11 House. You'll notice it's a thousand. There's a 12 note of ours on it and it was paid and it was by the 13 hour. It says 200 an hour. And it tells you about 14 the secretarial. 15 And it -- initially, this contract was to, 16 as I said, determine whether we had a justifiable 17 claim in his opinion. We had already just followed 18 an engagement I made with WorldClaim as a public 19 adjuster, which ran into a dead-end. The adjuster 20 never could get any -- anywhere with Nationwide. 21 Q. We'll talk about WorldClaim in a second. 22 I want to go through 335, but I also want to have 23 you look at 324. You see they look very similar 24 forms, except you'll see written in there at the 25 very top, there's an indication that this is -- 324</p>

4 (Pages 10 to 13)

Ralph Brockman 1/19/2010

Page 14

1 is for Compass Pointe.
 2 A. Yes.
 3 Q. You see that, sir?
 4 A. Yes.
 5 Q. Other than the two properties, these
 6 agreements in substance are all --
 7 A. The same.
 8 Q. -- the same; that's right?
 9 A. Correct.
 10 Q. You'll see 324 doesn't have a signature
 11 from Mr. O'Leary, while 335, the one for Carriage
 12 House does. Regardless, is it your understanding
 13 that Mr. O'Leary was operating under these two
 14 contracts for both the properties, Carriage House
 15 and Compass Pointe?
 16 A. Yes.
 17 Q. So then -- so let's look at 324, which is
 18 the one for Compass Pointe Apartments Partnership
 19 between Compass Pointe and Mr. O'Leary. And you'll
 20 see it's dated May 10th, 2007, right, sir?
 21 A. Yes.
 22 Q. It says under .3, "Consultant's
 23 compensation shall be \$200 per hour, plus \$35 an
 24 hour, plus secretarial, plus all related expenses."
 25 Did I read that correctly?

Page 15

1 A. Yes.
 2 Q. That's similar to what we saw in Defense
 3 Exhibit 263, Mr. O'Leary's June 29th report, right?
 4 A. Yes.
 5 Q. Right above that he says, "The scope of
 6 the consulting arrangement shall include the
 7 following services." Did I read that correctly?
 8 A. Yes.
 9 Q. It says, "Review evidence and supporting
 10 data." Did I read that correctly?
 11 A. Yes.
 12 Q. "Interview the client and supporting cast,
 13 frame the picture of the claim as consultant sees
 14 it." Did I read that right?
 15 A. Yes.
 16 Q. "Provide technical support to the client
 17 and/or his representatives regarding presentations,
 18 faxes, and standard practices within the industry in
 19 the client's attempt to settle their claim." Did I
 20 read that correctly?
 21 A. Yes.
 22 Q. "Should the case resort to the appraisal
 23 process, serve as an appraiser and appraiser process
 24 relating to damages to the residence." Did I read
 25 that?

Page 16

1 A. Yes.
 2 Q. "Analyze the damages, gather facts,
 3 calculations, and opinions into a formal report, and
 4 negotiate with second appraiser or the umpire to
 5 reach the fairest possible appraisal award." Did I
 6 read that correctly?
 7 A. Yes.
 8 Q. Those items that I just read, do you
 9 believe those are fair characterization of what
 10 Mr. O'Leary was retained to do when you signed this
 11 in May 2007 on behalf of plaintiff?
 12 A. Yes. There's an additional item that was
 13 written into it.
 14 Q. That's right. There's an additional
 15 handwritten. Is that your handwriting or
 16 Mr. O'Leary's or someone else's?
 17 A. I think that's Mr. O'Leary's.
 18 Q. Mr. O'Leary wrote, "Negotiate a fair fee
 19 with WorldClaim for the estimate of damage which is
 20 reimbursable from Nationwide should our claim be
 21 legitimate." Did I read that correctly?
 22 A. Yes.
 23 Q. What did Mr. O'Leary mean when he wrote
 24 that handwritten addition?
 25 A. You're asking me to say what Mr. O'Leary

Page 17

1 meant. I can only tell you what I think, but it may
 2 not be.
 3 Q. And I'm just asking the plaintiffs, your
 4 personal knowledge?
 5 A. Well, we realized that WorldClaim had
 6 worked on a contingent basis and didn't draw any
 7 money for any of their time and expense. And yet,
 8 they had numerous pictures and estimates that were
 9 very valuable to Mr. O'Leary trying to do the above
 10 items that you -- that you mentioned. And I told
 11 him that I have not -- was not having much luck with
 12 getting Mr. Fusco, Michael Fusco, representing
 13 WorldClaim, to move on this. And so he added this
 14 into the scope of work he would do as consultant.
 15 And I tried to, you know, get something from
 16 WorldClaim. And subsequently, he was successful and
 17 we had to pay some money. And the records I don't
 18 have with me what we paid, but we did reimburse
 19 WorldClaim for some of the pictures and the data
 20 that they had -- that they had prepared on this
 21 claim.
 22 (Exhibit 328 - 2/24/2008 E-mail marked for
 23 identification.)
 24 Q. Let me show you what we've marked as
 25 Defense Exhibit 328. This is a document produced by

5 (Pages 14 to 17)

Ralph Brockman 1/19/2010

Page 18

1 plaintiffs, Bates numbered CH 2358. Do you
 2 recognize this document, sir?
 3 A. It's a letter. It's an E-mail.
 4 Q. E-mail from probill@aol.com. That's
 5 Mr. O'Leary's E-mail address, right?
 6 A. Correct.
 7 Q. It's dated February 24th, 2008; is that
 8 right?
 9 A. Yes.
 10 Q. And it's to sbelk@brockmanents.com. Did I
 11 read that right?
 12 A. Correct.
 13 Q. That's Susan Belk at Brockman Enterprises?
 14 A. Yes.
 15 Q. And is she an employee of Compass Pointe
 16 or did she perform services on behalf of Compass
 17 Pointe?
 18 A. She's my office manager and -- she's not
 19 employed by Compass Pointe. She's just my office
 20 manager. And I am the managing partner of Compass
 21 Pointe. So in that regard, that's why she was --
 22 and I don't do my own E-mail. It comes to my office
 23 manager or my secretary.
 24 Q. Is it fair to say as your office manager,
 25 given you're the managing partner of Compass Pointe,

Page 19

1 she performs services on behalf of Compass Pointe?
 2 A. Yes.
 3 Q. And one of those services was interacting
 4 with Mr. O'Leary; is that fair to say?
 5 A. Yes.
 6 Q. Now, this E-mail is actually addressed to
 7 "Ralph." Was that common for Mr. O'Leary to send
 8 E-mails to Susan when he was trying to send E-mails
 9 to you?
 10 A. Yes.
 11 Q. So Mr. O'Leary writes in Defense
 12 Exhibit 328, "Ralph, I'm not sure exactly how to
 13 address the payment plan on this other phase of my
 14 assignment." Did I read that correctly?
 15 A. Yes.
 16 Q. Sir, there were two phases for
 17 Mr. O'Leary's engagement on behalf of plaintiffs; is
 18 that right?
 19 A. Mr. O'Leary's -- refers to it as phases.
 20 I recall that there were actual contracts that were
 21 entered into with Mr. O'Leary, the first of which
 22 you've already provided here as your defense
 23 exhibit. There was a second one and then there was
 24 a third one. If I could see the second one and see
 25 the date of it and compare it to this date, I could

Page 20

1 testify more accurately.
 2 Q. And we'll look at all these agreements
 3 that you're referring to, but I just want to make
 4 clear when he's referring to "phases," you mean --
 5 in your mind, that meant a progression of
 6 contractual arrangements with Mr. O'Leary?
 7 A. In my mind, that's what I see. I don't
 8 know that Mr. O'Leary saw it that way, but in my
 9 mind when I read this, that's what I thought. That
 10 the first contract we entered into said at the end
 11 we saw that there was a legitimate claim. And then
 12 we entered into another phase, another contract that
 13 was executed. And I think that's what he's
 14 referring to in this E-mail.
 15 Q. He next writes, "I indicated that I wanted
 16 to handle it with a one percent as we went along and
 17 a remaining two percent at the end." Did I read
 18 that right?
 19 A. Yes.
 20 Q. Do you know what Mr. O'Leary was referring
 21 to when he referred to one percent as we went along
 22 and the remaining two percent at the end?
 23 A. He's making a pitch here for compensation
 24 for the next phase of his assignment, as I see it.
 25 It's his sales job to try to make more money with

Page 21

1 another contract arrangement or another phase.
 2 Q. "One percent as we went along in the
 3 remaining two percent at the end." What do those
 4 percentages refer?
 5 A. I don't know. You'd have to ask him
 6 there. He wrote this. It's his pitch. I would
 7 assume he's mentioning of what he collected.
 8 Q. Of what he collected?
 9 A. Of what Nation -- what he got from
 10 Nationwide.
 11 Q. In other words, what kind of recovery he
 12 was able to get Nationwide to pay plaintiffs?
 13 A. Again, I don't know what his thought
 14 process.
 15 Q. When you received this, did you ask him
 16 what he meant?
 17 A. I don't recall.
 18 Q. If you look a little further down, he
 19 says, "The effort required to pull off" -- or "of
 20 the comprehensive package necessary to force the
 21 attorney down to around 20, 25 percent is
 22 extensive." Did I read that correctly?
 23 A. Yes.
 24 Q. Do you know what he was referring to there
 25 when Mr. O'Leary wrote "the effort necessary to

6 (Pages 18 to 21)

Ralph Brockman 1/19/2010

Page 22

1 force the attorney down to 20, 25 percent?"

2 A. I would assume he's meaning that he's got

3 to try to get some attorneys that would work for

4 less than what normally they want is 35 percent or

5 some of them even want half of what they get. So

6 he's making a pitch here of trying to find an

7 attorney that would work at 20 to 25 percent.

8 That's what I -- I think he meant. And it would

9 take him a lot of time to do that.

10 Q. Mr. O'Leary next writes, "In essence, I

11 would have to pull myself off the market for well

12 over a month's worth of time over the next 90 days

13 to get it ready to submit it and then trap them into

14 some breach of contract conduct necessary to wet the

15 attorney's appetite enough to secure a significant

16 discount in their fee." Did I read that correctly?

17 A. Yes, you did.

18 Q. When you -- did you ever ask Mr. O'Leary

19 what he meant when he wrote that he would have to

20 trap them into some breach of contract conduct

21 necessary to wet the attorney's appetite enough to

22 secure significant discount in their fee?

23 A. Not specifically on this -- this E-mail.

24 There was discussion between us on it. My

25 recollection of it is much like I have a contract

Page 23

1 with Nationwide, or we did, the partnership, and

2 they weren't fulfilling their part of the contract.

3 And he said, "The more you document that, the more

4 in the" -- "if it has to go to litigation, that the

5 more favor the possibility for a breach of

6 contract." And obviously, he's making a pitch like

7 he -- he -- you know, if they don't -- that that

8 would be a benefit to an attorney ultimately for

9 representing the partnership. That I recall

10 specifically. This E-mail, this stuff sent, I don't

11 recall that.

12 Q. Did you ever ask Mr. O'Leary to trap

13 Nationwide into some breach of contract conduct?

14 A. No.

15 Q. Did you ever ask Mr. O'Leary what he meant

16 when he said that he was going to try to trap

17 Nationwide --

18 A. No.

19 Q. -- into some breach of contract conduct?

20 A. Just what I already said.

21 Q. Other than what you've said, you don't

22 have any other -- other understanding what

23 Mr. O'Leary meant when he said he would try and trap

24 them into some breach of contract?

25 A. No, sir.

Page 24

1 Q. Did you ever tell Mr. O'Leary it would be

2 wrong to try and trap Nationwide into some breach of

3 contract conduct?

4 A. I never discussed this item here with him.

5 Q. Generally speaking, as a businessman, do

6 you think it's right to try and trap your business

7 counterparts into a breach of contract?

8 A. You'd have to define "trap" and then I

9 could. You know, it has a connotation when you say

10 "trap" like you're sneaking up on somebody. So

11 define "trap" for me.

12 Q. I'd like to use your definition. Do you

13 think that's what Mr. O'Leary meant when he used the

14 word "trap"?

15 A. Possibly, yes.

16 Q. And do you think it made sense to try and

17 sneak up on Nationwide and trap them into a breach

18 of contract conduct?

19 A. If one is not fulfilling his end of the

20 contract and refuse to communicate with designated

21 parties for the partnership, then he felt he is

22 fully in his rights to document that and use it

23 against them. And I think short-term for that is

24 trap.

25 Now, I would not have used the word

Page 25

1 "trap." I would have used just what I said.

2 Document that the -- the other party is not

3 fulfilling their -- their contract, but he used that

4 word. I did not.

5 MR. GILMORE: Can we go off the record a

6 minute?

7 VIDEOGRAPHER: Off record at 9:35.

8 (Off the record.)

9 VIDEOGRAPHER: On the record at 9:39.

10 (Exhibit 331 - 4/7/2008 E-mail marked for

11 identification.)

12 Q. (By Mr. Gilmore) Let me hand you what's

13 been marked as Defense Exhibit 331. And it's a

14 document Bates numbered CH 2362 to 2363. Have you

15 seen this two-page document before, sir?

16 A. Yes.

17 Q. And this is an April 7, 2008 E-mail from

18 Lewis O'Leary to Susan Belk directed to you, right,

19 sir?

20 A. Yes.

21 Q. And the "Subject" line is "Second

22 Agreement"; is that right?

23 A. Yes.

24 Q. The E-mail says, "Ralph, per our call last

25 week, the attached is the proposed second agreement

7 (Pages 22 to 25)

Ralph Brockman 1/19/2010

Page 26

1 we discussed. I show where I had sent this to you
 2 back around the first of February, but regardless,
 3 if it is in order, please give me a call and let's,"
 4 quote, "get her done." Did I read that correctly?
 5 A. Yes.
 6 Q. Do you remember a discussion with
 7 Mr. O'Leary early in April regarding a second
 8 agreement?
 9 A. Yes. He's always making a pitch, you
 10 know, and this was one of them, but I don't think
 11 this one was executed, though.
 12 Q. Well, let's take a look at the next page
 13 is the attachment that he's sending, correct?
 14 A. Yes.
 15 Q. It says CH 2363, and it's "Services
 16 Agreement" at the top, right?
 17 A. Yes.
 18 Q. It says, "Purpose of the services
 19 agreement is for the development of two sets of
 20 three estimates segregated by wind and flood,
 21 supporting evidence that a hurricane Katrina wind
 22 claim for multi-family housing units that were at
 23 the time known as Compass Pointe located at 41
 24 Chicot, Pascagoula, Mississippi, and Carriage House
 25 located at 2865 Martin Bluff Road, Gautier,

Page 27

1 Mississippi." Did I read that correct?
 2 A. Yes.
 3 Q. Did I pronounce that street name
 4 correctly, sir, or is it Chicot for the Compass
 5 Pointe property?
 6 A. I think so, Chicot.
 7 Q. Chicot.
 8 MR. GAUDET: As far as I know.
 9 Q. We'll go with Chicot.
 10 MR. GILMORE: Micky, jump in if it's
 11 incorrect.
 12 MR. COWAN: All right.
 13 Q. (By Mr. Gilmore) There are a series of
 14 bullet points that describe what Lewis O'Leary would
 15 do for these services, right?
 16 A. Correct.
 17 Q. And first one reads, "Forensic examination
 18 of all the available evidence regarding each segment
 19 of two losses. Then interview potential witnesses
 20 and a generation of witness statements. Create an
 21 estimate that is supported by the evidence,
 22 segregating it into flood and wind. Create a
 23 business personal property loss assessment estimate
 24 for both properties. Create a business income loss
 25 assessment. Develop a proof of loss that sets out"

Page 28

1 -- "all of this out. And work with attorneys paid
 2 by the client to ensure proper legal format for
 3 all." Did I read all of that correctly?
 4 A. Yes.
 5 Q. The first one, "Forensic examination of
 6 all available evidence," so far as you know,
 7 Mr. O'Leary performed that service, right?
 8 A. Ultimately, yes.
 9 Q. The second one, "Interview potential
 10 witnesses and generation of witness statements," do
 11 you know whether Mr. O'Leary has interviewed
 12 potential witnesses?
 13 A. I'm certain he has, yes.
 14 Q. Do you know if he's generated any witness
 15 statements?
 16 A. I don't re -- I don't know.
 17 Q. You ever seen a witness statement that --
 18 A. No, I haven't. That's why I say I don't
 19 know. I would think he probably has, but I haven't
 20 seen them.
 21 Q. "Create estimate that is supported by the
 22 evidence, segregating it into flood and wind." Now,
 23 we may disagree whether it's estimates or supported
 24 by the evidence, but you would agree he created
 25 estimates of damage for winds to Compass Pointe,

Page 29

1 right?
 2 A. Yes.
 3 Q. Now, "Creating business personal property
 4 loss assessment estimate for both properties." Do
 5 you know if Mr. O'Leary has ever performed or
 6 created a business personal property loss assessment
 7 estimate?
 8 A. No, I don't. I don't recall one of those.
 9 Q. The next one, "Create a business income
 10 loss assessment." Do you know if Mr. O'Leary has
 11 ever created a business income loss assessment?
 12 A. No, I don't. I don't think he did, but he
 13 may have.
 14 Q. Now, "Develop a proof of loss that sets
 15 all of this out." Did I read that right?
 16 A. Yes.
 17 Q. Do you know if he's developed a proof of
 18 loss that sets all of this out?
 19 A. That -- that summary that you submitted
 20 earlier --
 21 Q. Defense Exhibit 263?
 22 A. -- shows that proof of loss.
 23 Q. Is that something you would consider a
 24 proof of loss?
 25 A. I would --

8 (Pages 26 to 29)

Ralph Brockman 1/19/2010

Page 30

1 Q. And I produced --
 2 A. Yes. He had pictures and -- yes.
 3 Q. So that report, Defense Exhibit 263, along
 4 with his photographs and the estimates of damage,
 5 you would consider that to be the proof of loss?
 6 A. Yes.
 7 Q. And then finally, "Work with attorney paid
 8 by the client to ensure proper legal format for
 9 all." And you -- you would agree Mr. O'Leary has
 10 worked with attorneys that work on your behalf,
 11 correct?
 12 A. Yes. Again, though, I don't think this is
 13 the contract we ever executed. It's his pitch to do
 14 this. He's -- he's constantly, by E-mail, pitching
 15 to get compensation and -- and for these services,
 16 but I don't believe we executed it.
 17 Q. Now, then you'll see, "The contractor
 18 shall be paid a total of three percent of the value
 19 of the claim for these services. This fee shall be
 20 funded as follows: One percent of the gross amount
 21 of the funds received by the insured entity or
 22 entities based upon a \$10 million forecast for the
 23 collective value of all three categories to be
 24 funded on agreed milestone basis during the
 25 production of the estimate proof of loss package."

Page 31

1 Did I read that correctly?
 2 A. Yes.
 3 Q. The next says, "The difference between the
 4 amount paid for these services during the production
 5 of the estimate of proof of loss package and
 6 three percent of the gross amount of funds received
 7 by the insured entity or entities for their attorney
 8 for all aspects of these claims within 15 days of
 9 receipt of the funds." Did I read those correctly?
 10 A. Yes.
 11 Q. Sir, it's your testimony that this service
 12 agreement was never entered into, right?
 13 A. I do not recall that it was. It was a
 14 pitch by Mr. O'Leary.
 15 (Exhibit 323 - E-mail marked for
 16 identification.)
 17 Q. Let me hand you what's been marked as
 18 Defense Exhibit 323. It's document Bates number
 19 CH 2350 to 2351. It's E-mail produced by
 20 plaintiffs. This E-mail was -- comes from you.
 21 You see second page it says, "Yours truly,
 22 Ralph Brockman," right?
 23 A. Yes.
 24 Q. It's sent to Joe Ledoux, Diane McGowan,
 25 and Jan Brockman; is that correct?

Page 32

1 A. Yes.
 2 Q. Can you tell me who those three
 3 individuals are, sir?
 4 A. Well, at this time, they were partners.
 5 Jan is my wife. So I just let her be copied. Diane
 6 is her sister, McGowan. And Joe Ledoux is her
 7 brother-in-law. And they were the heads of the
 8 family that were partners in this. They had other
 9 family -- they had family partnerships. So
 10 Joe Ledoux's became his three children. And Diane's
 11 became her two children. So even though they may
 12 not have been, per se, the owners, they were the
 13 heads of the family partnerships. That's why they
 14 were copied.
 15 Q. You'll see -- you look down to -- well,
 16 strike that.
 17 This E-mail was apprising other partners
 18 in the partnerships about what Lewis O'Leary has
 19 been doing on behalf of the partnerships; is that
 20 right?
 21 A. Yeah, that's correct.
 22 Q. If you look at the fourth paragraph, it
 23 says, "It is now time to decide if we enter into" --
 24 I'm sorry -- "if we enter the second service
 25 agreement referred to as phase two, copy enclosed."

Page 33

1 Note that he implies a \$10 million forecast in
 2 payment of three percent of the gross to him with
 3 advances based on .75 of the projected claim 75,000,
 4 and the balance, 2.25 percent, being paid at the end
 5 of the claim. Should the balance be less than
 6 10,000" -- "10 million, his balance would be
 7 adjusted proportionate to what is collected. He's
 8 essentially requesting 75,000 cash-flow to prepare
 9 the items in phase two." Did I read that correctly?
 10 A. Correct.
 11 Q. This paragraph summarizes the proposed
 12 phase two second service agreement with O'Leary; is
 13 that right, sir?
 14 A. Yes.
 15 Q. And part of it is ongoing cash to finance
 16 his ongoing work for the plaintiff; is that right?
 17 A. Which paragraph are you referring to?
 18 Q. This fourth paragraph here. The \$75,000
 19 cash-flow, that's to allow him to continue his
 20 ongoing work; is that right?
 21 A. That's correct. That's what it says.
 22 Q. And then a payment of three percent of the
 23 gross to him with advances based on .75 for the
 24 projected claim. The three percent of the gross to
 25 him refers to his \$10 million forecast; is that

9 (Pages 30 to 33)

Ralph Brockman 1/19/2010

<p style="text-align: right;">Page 34</p> <p>1 right, sir?</p> <p>2 A. I believe that's correct.</p> <p>3 Q. Now, go down to the very bottom and then</p> <p>4 carrying over to the next page. The bottom of 2350,</p> <p>5 you write, "We have forwarded his compensation for</p> <p>6 phase one by undistributed cash in our account. Our</p> <p>7 current cash balance is \$44,070 and it's sufficient</p> <p>8 to cover the balance of phase one, but not the</p> <p>9 75,000 for phase two. This will require a capital</p> <p>10 call from each of us, and if you do not wish to</p> <p>11 pursue this further, then it is your right and</p> <p>12 please advise. I guess I am a sucker and really</p> <p>13 want to go forward." Did I read all of that</p> <p>14 correctly?</p> <p>15 A. Correct.</p> <p>16 Q. Why did you write, "I guess I am a sucker</p> <p>17 and really want to go forward"?</p> <p>18 A. Well, Lewis is apparently making all kind</p> <p>19 of pitches. And -- and -- and that \$10 million is a</p> <p>20 big number. And sometimes you want to believe I</p> <p>21 know that we had a huge loss way more than we</p> <p>22 collected from Nationwide. And in all of these</p> <p>23 pitches he's making, I'm -- yeah, I'm buying it. I</p> <p>24 think it's worthwhile to go forward. And maybe I'm</p> <p>25 a sucker for believing it, but I said what --</p>	<p style="text-align: right;">Page 36</p> <p>1 says, "Revised Services Agreement," so this is a</p> <p>2 different agreement than the one we looked at a few</p> <p>3 minutes ago that Mr. O'Leary had E-mailed you in</p> <p>4 April, right, sir?</p> <p>5 A. Yes.</p> <p>6 Q. Now, if you look at the itemization of the</p> <p>7 specific services he would be performing for each</p> <p>8 property, you go through those, you see at the top</p> <p>9 on 337 and 338, those appear to be the same as his</p> <p>10 proposal from April, right?</p> <p>11 A. That's correct.</p> <p>12 Q. And you'll see the payment terms are a</p> <p>13 little different; isn't that right, sir?</p> <p>14 A. Yes.</p> <p>15 Q. I want to go through each of them and have</p> <p>16 you explain the differences that are handwritten or</p> <p>17 typed in each of these two documents. On 337, it</p> <p>18 says about halfway down, "The contractor," that's</p> <p>19 Mr. O'Leary, right?</p> <p>20 A. That's who?</p> <p>21 Q. Mr. O'Leary is the contractor, right?</p> <p>22 A. I suppose that's Probuilders.</p> <p>23 Q. Probuilders, Mr. O'Leary's company, right?</p> <p>24 A. Yes.</p> <p>25 Q. "The contractor shall be paid a total of</p>
<p style="text-align: right;">Page 35</p> <p>1 exactly what I thought at the time. "I guess I'm a</p> <p>2 sucker and really want to go forward." But I wasn't</p> <p>3 going to bind my partners into -- to that. I'm</p> <p>4 giving them a choice here that they can get out now</p> <p>5 or it's gonna cost a lot more money going forward.</p> <p>6 We still haven't got the contract that was signed,</p> <p>7 though.</p> <p>8 Q. I'm going to show you what plaintiffs have</p> <p>9 produced. It's marked -- hand you two separate</p> <p>10 documents. Defense Exhibit 337, which is produced</p> <p>11 by plaintiffs, Bates number CH 1159, and Defense</p> <p>12 Exhibit 338, CH 1160.</p> <p>13 (Exhibit 337 - 8/20/2008 Revised Service</p> <p>14 Agreement marked for identification.)</p> <p>15 (Exhibit 338 - Revised Service Agreement</p> <p>16 marked for identification.)</p> <p>17 Q. Sir, each of those documents is entitled</p> <p>18 "Revised Service Agreement," right?</p> <p>19 A. I see one. Wait a minute.</p> <p>20 Q. 337, 338?</p> <p>21 A. Yes.</p> <p>22 Q. They look very similar. Have slightly</p> <p>23 different handwriting -- I guess handwritten</p> <p>24 notations on them, which we'll go through in a</p> <p>25 second. I want to start at the top, though. It</p>	<p style="text-align: right;">Page 37</p> <p>1 four percent of the value of the claim or 88,500,</p> <p>2 whichever is higher for these services." Did I read</p> <p>3 that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. You'll see Defense Exhibit 338 says, "The</p> <p>6 contractor shall be paid for both agreements a total</p> <p>7 of four percent of the value of the claim or a</p> <p>8 125,000, whichever is higher, for these services."</p> <p>9 Did I read that correctly, including that</p> <p>10 handwritten notation?</p> <p>11 A. Yes.</p> <p>12 Q. Sir, looking at Defense Exhibit 337, go</p> <p>13 down to the bottom. That's your signature dated</p> <p>14 August 20th, 2008, right, sir?</p> <p>15 A. Yes.</p> <p>16 Q. Now, there are also some handwritten notes</p> <p>17 at the very bottom of the page on 337. It says,</p> <p>18 "Paid to date 10,000. Balance to draw 53,500.</p> <p>19 Adjusted total 63,500." Did I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. There are initials next to it. You see</p> <p>22 those initials, sir?</p> <p>23 A. Yes.</p> <p>24 Q. Whose initials are those?</p> <p>25 A. They're mine.</p>

10 (Pages 34 to 37)

Ralph Brockman 1/19/2010

<p style="text-align: right;">Page 38</p> <p>1 Q. Look at CH 1160, Defense Exhibit 338. And 2 that document also has your signature on it; is that 3 right, sir? 4 A. Correct. 5 Q. Now, both these documents are also signed 6 by Linda O'Leary. Is that Mr. O'Leary's wife? 7 A. Yes. 8 Q. She's indicated to be vice-president for 9 Probuilders. Is that your understanding? 10 A. Yes. 11 Q. Both Defense Exhibit 337 and Defense 12 Exhibit 338 are signed agreements between you and 13 Mr. O'Leary's company for the services we discussed 14 a few minutes ago on behalf of Compass Pointe and 15 Carriage House. Is that -- is that fair to say? 16 A. Yes. 17 Q. Do you have any explanation as to the 18 slightly different terms in terms of the dollar 19 figures in Defense Exhibit 337 and 338? 20 A. No, I don't. I think -- it seems like one 21 of them would have been agreement for Compass Pointe 22 and the other one for Carriage House, but it doesn't 23 state that. I don't know why. 24 Q. And I -- that could be it. That's one of 25 the reasons I was asking you. Neither of these</p>	<p style="text-align: right;">Page 40</p> <p>1 client, and Lewis O'Leary, the property loss 2 consultant, hereafter referred to as the 3 consultant." Did I read that correctly? 4 A. Yes. 5 Q. It says, "The purpose of this service 6 agreement and the terms and conditions are set out 7 in the attached document." When it says "the terms 8 and services are set out in the attached document," 9 is it referring to the attached document that we saw 10 -- looked at a few minutes ago? 11 A. I would -- I would assume that, yes, sir. 12 Q. It's dated -- signed by you; is that 13 right? 14 A. Yes. 15 Q. It's dated August 28th, 2008? 16 A. Yeah, the same date as the revised service 17 agreement, yes. 18 Q. So these were -- this was executed the 19 same date as the revised service agreement. Is that 20 your recollection? 21 A. Yes. 22 Q. It's also signed by -- is that -- well, 23 actually Lewis? 24 A. No. This was actually signed by Lewis. 25 It sounds like -- I don't know that Lewis became</p>
<p style="text-align: right;">Page 39</p> <p>1 documents indicate it is specific to one property or 2 the other. Is it your understanding that one or the 3 other is for one property and the other is for the 4 other property? 5 A. That's what I would think because they're 6 different amounts of -- 7 Q. Regardless, though, both of these were in 8 effect for the two properties, whichever was 9 specific to one of the properties, right? 10 A. Yes, for an interim period of time. It 11 then got negated by yet a third and final contract. 12 (Exhibit 336 - 8/28/2008 Engagement 13 Agreement for a Commercial Property marked for 14 identification.) 15 Q. I want to hand you something else, 336, 16 Defense Exhibit 336, which is another document 17 produced by plaintiffs, Bates number CH 1158. You 18 see this document is different from 337 and 338 that 19 we looked at previously, right, sir? 20 A. Yes. 21 Q. It's entitled "Engagement Agreement For a 22 Commercial Property." "There exists a service 23 agreement by and between Mr. Ralph Brockman, the 24 authorized representative for Brockman Enterprises, 25 et al., hereby collectively referred to as the</p>	<p style="text-align: right;">Page 41</p> <p>1 aware of something that his wife wasn't or I wasn't, 2 and then he sends this E-mail on the same day. And 3 it has some different computations of what's been 4 paid to date. And a different computation of the 5 balance remaining. I can't explain it. Lewis sends 6 a lot of paperwork. But yes, I signed it on the 7 same date and I initialed the -- the writing below, 8 which is my writing. 9 Q. Do you know -- can you give an explanation 10 as to what this purpose of this document is in 11 relation to the previous two ones we looked at? 12 A. The only item appears to me that is the -- 13 the capping funding of future service of 15 grand. 14 And the first document didn't have a cap in it. So 15 this is in addition to the -- the other executed 16 revised service agreement. And why it shows a 17 different amount paid to date than the other 18 documents, I don't know. But it does cap a future 19 funding and additional 15 grand. And -- 20 Q. So that -- 21 A. That's to be paid out of the same progress 22 basis at same hourly rate, plus expenses. So he's 23 to continue to be paid that \$200 an hour to be 24 capped at 15,000. So that's an addition, more or 25 less like an addendum, to these contracts we entered</p>

11 (Pages 38 to 41)

Ralph Brockman 1/19/2010

Page 42

1 into. Executed on the same day.
 2 Q. You would agree that cap is silent as to
 3 his entitlement under Defense Exhibit 337 and 338 to
 4 four percent of the value of the claim?
 5 A. Yes, it's silent.
 6 (Exhibit 339 - 9/22/2009 Letter marked for
 7 identification.)
 8 Q. Let me hand you what's been marked as
 9 Defense Exhibit 339. This has been Bates numbered
 10 CH 611 to 612. Have you seen this document before,
 11 sir?
 12 A. Yes.
 13 Q. This is a letter prepared by your
 14 attorneys, Matthew Brown and Nathan Gaudet, at
 15 Sullivan Stoler and Resor?
 16 A. Yes.
 17 Q. Dated September 22nd, 2009, right?
 18 A. Yes.
 19 Q. If you turn to the second page, is that
 20 your signature on it, "Approved by Ralph Brockman as
 21 agent for Sunquest Properties, Inc., Compass Pointe
 22 Apartments Partnership, and Carriage House Partners
 23 Partnership"?
 24 A. Yes.
 25 Q. Dated September 24th, 2009?

Page 43

1 A. Correct.
 2 Q. You'll see above it, do you recognize that
 3 as Mr. O'Leary's signature, also dated
 4 September 24th, 2009?
 5 A. Yes.
 6 Q. Have you read through this document, sir?
 7 A. Yes.
 8 Q. Why was this document created, sir?
 9 A. Well, Mr. O'Leary has had a point in time
 10 in here from August 20th, '08 up and to -- up and to
 11 this date, in which if he had collected anything, he
 12 would have received a compensation as outlined by
 13 the contract executed on August 20th. But he didn't
 14 collect anything at all. Just like WorldClaim
 15 didn't collect anything. They had a seven percent
 16 contingency fee and a contract. They didn't collect
 17 anything other than what I paid them for their
 18 expenses to get the photos and the estimates.
 19 Mr. O'Leary had a pretty long period of time to try
 20 to collect something and he struck out, too.
 21 So it became very clear that the only way
 22 that I would possibly ever collect anything was to
 23 engage an attorney. The first one that was engaged
 24 was actually Will Clark, and Will Clark actually, I
 25 believe -- no, it wasn't Will Clark.

Page 44

1 MR. GAUDET: Wynn.
 2 A. Wynn Clark. And he actually filed suit
 3 himself before the statute of limitations expired.
 4 Subsequent to that, Mr. Clark didn't have a staff
 5 sufficient to handle the claim, but he was very
 6 effective in filing the suit before the statute of
 7 limitation was out. And then we gravitated --
 8 discovered Matthew Brown and had worked with him
 9 before. And so we then got Matthew to substitute
 10 counsel in place of Wynn Clark. And he was apprised
 11 of all the agreements prior to this that we had that
 12 -- that had always paid a draw of \$200 an hour on
 13 every one of them. But he never got anything.
 14 So now it was time to enter yet the final
 15 agreement that superseded all the previous
 16 agreements. And Mr. Brown prepared this and we
 17 both, Lewis and I, agreed to it. Certainly, the
 18 dollar amount now is capped a lot higher. But I
 19 went along with it.
 20 Q. I want to ask you a few things about this
 21 document, sir. First of all, it doesn't refer to
 22 any prior agreements --
 23 A. No.
 24 Q. -- between plaintiffs and Mr. O'Leary,
 25 does it?

Page 45

1 A. No.
 2 Q. Defense Exhibit 339 doesn't say that any
 3 prior agreements are superseded or terminated, does
 4 it, Mr. Brockman?
 5 A. No.
 6 Q. Why did you agree to cap Mr. O'Leary's fee
 7 at 190,000 during the course of the project?
 8 A. Well, I wanted a cap myself. I mean, it's
 9 just I didn't want anything open-ended. Mr. O'Leary
 10 is kind of like if you read the original agreement,
 11 we had much, much smaller fees and this thing is
 12 growing and growing and growing. Well, it -- it was
 13 a huge loss. I think it grew on him. It required
 14 literally thousands of man-hours possibly to approve
 15 the claim. And that's why this amount kept
 16 increasing. And I finally had to put a foot to it
 17 and said, "I got to have a cap, period. No more.
 18 I've heard two different" -- "You've had your try to
 19 settle it with World" -- I mean, "Nationwide and
 20 failed. WorldClaim had one and it failed."
 21 I'm sorry. (Telephone rings.)
 22 So that's why I insisted on a cap, and we
 23 entered this contract. And it is the one that we're
 24 abiding by and have been ever since dated
 25 September 22nd, '09.

12 (Pages 42 to 45)

Ralph Brockman 1/19/2010

<p style="text-align: right;">Page 46</p> <p>1 Q. Are you aware of any -- any other document 2 that terminates the revised services agreements that 3 we looked at a few minutes ago that were entered 4 into in August? 5 A. No, not a document that terminates it. 6 Q. Any other kind of communication other than 7 a document that terminates revised service 8 agreement? 9 A. This is the contract that we entered into. 10 Just like the one in August was a new agreement that 11 -- that replaced Mr. O'Leary's first agreement. 12 This became an agreement that replaced Mr. O'Leary's 13 second agreement. But there was no, to my 14 knowledge, termination document ever executed or 15 signed. 16 Q. Go back to 337 and 338. Each of them says 17 -- the line right under the bullet points, "By 18 mutual agreement, the two parties have elected to 19 modify the existing agreement. The following are 20 the terms and conditions of the modified agreement." 21 Did I read that correctly? 22 A. Yes. 23 Q. No such similar language appears in 24 Defense Exhibit 339, right, sir? 25 A. Correct. Now, this was prepared, this</p>	<p style="text-align: right;">Page 48</p> <p>1 VIDEOGRAPHER: Off record at 10:11. End 2 of tape one. 3 (Off the record.) 4 VIDEOGRAPHER: Beginning tape two. On the 5 record at 10:11. 6 Q. (By Mr. Gilmore) I'm going to hand you 7 some other communications with Mr. O'Leary. First, 8 361. 9 (Exhibit 361 - File, Compass Pointe 10 Carriage House marked for identification.) 11 Q. This is a document Bates numbered CH 1193. 12 You see at the top is a document -- some handwritten 13 notation, right, sir? 14 A. Yes. 15 Q. Whose handwriting is that? 16 A. That's mine. 17 Q. Does it say, "File, Compass Pointe, 18 Carriage House"? 19 A. Yes. 20 Q. Is there a file on these two properties? 21 A. Yes. 22 Q. Is that at Brockman Enterprises? 23 A. Yes, sir. 24 Q. Is that where this document came from? 25 A. Yes, sir.</p>
<p style="text-align: right;">Page 47</p> <p>1 Exhibit 337 and 8, by Lewis O'Leary. The Defense 2 Exhibit 339 is prepared by Matthew Brown. 3 Q. You reviewed 339 to make sure it was 4 accurate? 5 A. Yes, sir. 6 Q. Did Mr. O'Leary ever tell your attorneys 7 that he had prior signed agreements with plaintiffs? 8 A. I don't know. I would assume he did. 9 Q. Did you ever ask Mr. O'Leary if he had 10 told your attorneys whether -- 11 A. I don't -- 12 Q. -- you had prior signed agreements with 13 him? 14 A. He knew we had agreements, yes, Mr. Brown 15 did. I don't recall him reading the agreements as 16 we have today, but yes, he very clearly knew that we 17 had agreements and were provided those, I'm pretty 18 sure, by Mr. O'Leary. 19 Q. Do you know when Mr. O'Leary provided 20 either you or your attorneys the signed agreements? 21 A. Obviously, prior to this date of 22 September of '09. I would assume it was probably 23 within the 30 days of that date. 24 MR. GILMORE: Go off record to change 25 tape.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. When was that file searched in response to 2 request for production in this litigation? 3 A. Gosh, I don't know. It was before the 4 first deposition. Y'all were provided the whole 5 file. I think you came to the premises and examined 6 the whole file. 7 Q. I don't believe any attorney for 8 Nationwide has inspected plaintiffs' documents on 9 the premises. It's your testimony that this 10 document was found in plaintiffs' file prior to your 11 first deposition, which I believe was October 20th? 12 A. Yes, sir. 13 Q. And, in fact, in response to discovery 14 requests, did plaintiffs search their files or 15 search the Compass Pointe and Carriage House files 16 that are referenced in this document? 17 A. Yes, sir. 18 Q. Is your testimony today that any 19 responsive documents that were found in those two 20 files were produced to Nationwide in this discovery? 21 A. Yes, sir. 22 Q. That was given to your attorneys and they 23 produced it, right? 24 A. Yes, sir. The first attorney received a 25 copy of the whole file. Maybe that's who came. I'm</p>

13 (Pages 46 to 49)

Ralph Brockman 1/19/2010

Page 50

1 not certain who came to the office.
 2 Q. The first attorney would be Wynn Clark?
 3 A. Wynn Clark. So but I think in some of the
 4 legal proceedings, Nationwide demanded any and all
 5 information and this was provided from that file.
 6 Q. This document, specifically an E-mail from
 7 Lewis O'Leary addressed to Susan Belk, was it sent
 8 to your direction?
 9 A. Yes.
 10 Q. It says Number 4, "Because we are looking
 11 at the diminished value aspect, I will need to" --
 12 "to assistance of a very competent real estate
 13 appraiser, one that is ready, willing, and able to
 14 work closely with me. If he is gone, my editing
 15 time will be minimal." Did I read that correctly?
 16 A. Yes, sir.
 17 Q. Do you know what Mr. O'Leary was referring
 18 to when he said "because we're looking at diminished
 19 value aspect"?
 20 A. He -- this is his opinion. And, of
 21 course, he's building groundwork. This was back in
 22 May of '07 before he even entered into the
 23 August '08 agreement. He's constantly building a
 24 proof that he feels like he can substantiate this
 25 claim. And one of them was the diminished value

Page 51

1 aspect where it's kind of like they use a parable
 2 like if you damage a car that's brand new a block
 3 the dealership and it's a big scratch on the door,
 4 then you get it repainted. Well, obviously, your
 5 door cost so much to repaint, but now you've got a
 6 diminished product in value. That -- that brand new
 7 car that has a repainted door is no longer worth
 8 what it was when it left the dealership. I remember
 9 that. And I think he mentioned something about we
 10 have damaged property here that might not ever be
 11 worth what it was prior to the storm. That was --
 12 that's vaguely what I recall.
 13 Q. To use that analogy that you described, is
 14 it your contention that Nationwide is responsible to
 15 pay plaintiffs any amount of diminished value that
 16 the properties might have had following hurricane
 17 Katrina?
 18 A. It is not my claim. I left all of this to
 19 the attorney. Where he saw -- if he saw a legal
 20 exposure, then he is supposed to go for it. If he
 21 thought this was going up the wrong street, then he
 22 was not supposed to go for anything more than what
 23 he felt we were legally entitled to. But this is a
 24 pitch that Lewis made.
 25 Q. The next one he writes, "5. Because I'm a

Page 52

1 firm believer that proving your point coming from
 2 two directions is always better, I will need to work
 3 with AGC on estimated cost to have done the work
 4 yourself to prove that the," quote, "diminished
 5 value is not disproportionate with regard to the
 6 cost of repairs. A 1.5 ratio is a good target."
 7 Did I read that correctly?
 8 A. Yes.
 9 Q. Did you have Mr. O'Leary talk with a
 10 general contractor on estimated cost to have done
 11 the work yourself?
 12 A. The only one that he talked to, I believe,
 13 was the contractor that rebuilt it, Carriage House
 14 and Compass Pointe.
 15 Q. That would be Greg Stewart?
 16 A. Greg Stewart.
 17 Q. Madison Homes?
 18 A. Madison Homes. That's the only one I know
 19 he talked to.
 20 Q. Do you know what he meant when Mr. O'Leary
 21 wrote "a 1.5 ratio is a good target"? Did you ask
 22 Mr. O'Leary what he meant when he wrote that?
 23 A. No, I didn't.
 24 Q. Sitting here today, do you have an
 25 understanding what Mr. O'Leary is referring to when

Page 53

1 he says "a 1.5 percent ratio is a good target"?
 2 A. No, I don't know what he meant.
 3 Q. Is he referring to how much more
 4 diminished value might be beyond cost of repairs?
 5 A. I just don't know.
 6 (Exhibit 327 - 1/26/2008 Memo marked for
 7 identification.)
 8 Q. Let me hand you 327. This is a document
 9 produced by plaintiffs, Bates numbered 2355 to 2357.
 10 You'll see I think it appeared out of order in the
 11 files as it was produced. But it's a three-page
 12 memo from Mr. O'Leary to you, dated January 26th,
 13 2008?
 14 A. Yes, sir.
 15 Q. Why did Mr. O'Leary send this memo to you?
 16 A. I don't know, other than just he's
 17 continuing to work under that second contract that
 18 was executed. He's trying to get a claim paid by
 19 Nationwide. He was trying to get them to agree to
 20 appraisal process, which was denied. And he's just
 21 sending me an update of January 26th. As I gather
 22 it, an update of information that's pertinent to his
 23 trying to develop a claim that Nationwide will pay.
 24 Q. Now, if you turn to the third page of this
 25 document, which is actually Page 2 of Mr. O'Leary's

14 (Pages 50 to 53)

Ralph Brockman 1/19/2010

<p style="text-align: right;">Page 54</p> <p>1 memo.</p> <p>2 MR. GAUDET: It's out of order.</p> <p>3 Q. It's -- yeah.</p> <p>4 A. Yeah, it's out of order.</p> <p>5 Q. Right. It's the page Bates numbered 3257,</p> <p>6 which is the third page of this document. It's</p> <p>7 actually page -- numbered Page 2 of his memo.</p> <p>8 A. Yes.</p> <p>9 Q. You see at the bottom -- and these</p> <p>10 photographs are difficult to look at in the document</p> <p>11 as -- as it was produced. But he's pointing out</p> <p>12 some photographs and he's referring to how to</p> <p>13 allocate damage based on wind versus water; is that</p> <p>14 correct?</p> <p>15 A. I guess so, yes, sir.</p> <p>16 Q. Now, Mr. O'Leary writes -- the last</p> <p>17 sentence in that long middle paragraph, "These pics</p> <p>18 combined with the passage of time without power,</p> <p>19 heat, and lack of ability to dry out these interiors</p> <p>20 within a week or two make for near perfect argument</p> <p>21 that all second finishes would have been lost,</p> <p>22 affording all of the second floors and half the</p> <p>23 damages for the first floor, a portion above the</p> <p>24 waterline on the ground floor for the wind portion."</p> <p>25 Did I read that correctly?</p>	<p style="text-align: right;">Page 56</p> <p>1 estimates exceed a hundred percent of the cost to</p> <p>2 repair the properties?</p> <p>3 A. I think what he's meaning here -- maybe</p> <p>4 I'm wrong -- but we could not collect anything from</p> <p>5 Nationwide. We had payment obligations on the</p> <p>6 mortgage. And we were now at the point where we'd</p> <p>7 run out of money. So we are now going to be in</p> <p>8 default on the mortgage. And, therefore, you're</p> <p>9 forced to try to pay that mortgage. You're forced</p> <p>10 to sell the property as is. And when you're selling</p> <p>11 damaged properties, you may be selling them at a</p> <p>12 value less than they would be if you had the money</p> <p>13 to fix them.</p> <p>14 So I believe that's what he's trying to</p> <p>15 say here, is that selling them damaged is a</p> <p>16 difference, as an extra loss you're taking, that a</p> <p>17 third party won't take if they have money to fix</p> <p>18 them. I think that's what he's meaning here. And</p> <p>19 -- and we did sell the properties as is, both of</p> <p>20 them.</p> <p>21 The mortgage required us -- and this is a</p> <p>22 weird one. The mortgage required us to pay all</p> <p>23 insurance proceeds to the mortgage. And then the</p> <p>24 same mortgage said, "If you prepay it, now you have</p> <p>25 prepayment penalties." This was just -- this storm</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Yes, sir.</p> <p>2 Q. He then goes on to write, "Under normal</p> <p>3 circumstance, this would amount to 75 percent the</p> <p>4 amount of the loss. But in this case, because we</p> <p>5 are looking at the spread between affording a large</p> <p>6 discount for having to sell as is, for instance,</p> <p>7 what Greg sold it for after making the repairs, that</p> <p>8 spread is the amount of the actual loss and will</p> <p>9 probably exceed a hundred percent of the cost to</p> <p>10 repair." Did I read all of that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. Mr. O'Leary is telling you that in his</p> <p>13 opinion, the actual loss that plaintiffs should</p> <p>14 claim should exceed the cost to repair; fair to say?</p> <p>15 A. That's what he says here.</p> <p>16 Q. Did you ever respond to Mr. O'Leary's</p> <p>17 statement in this memo?</p> <p>18 A. Oh, not -- not really. I just filed this</p> <p>19 -- all of his updates.</p> <p>20 Q. Well, his statement that the actual loss</p> <p>21 that plaintiffs should claim should exceed a hundred</p> <p>22 percent of the cost to repair, is that a statement</p> <p>23 that you've ever discussed with him?</p> <p>24 A. No, sir.</p> <p>25 Q. Do you know whether Mr. O'Leary's current</p>	<p style="text-align: right;">Page 57</p> <p>1 never ended.</p> <p>2 And the prepayment penalties were over</p> <p>3 \$800,000 between the two properties. So I had to</p> <p>4 get another lawyer to fight that. And his name was</p> <p>5 Brunini and he's in Jackson. He was actually my</p> <p>6 son-in-law at the time's father, Ed Brunini. And he</p> <p>7 told me he could make them look bad before any judge</p> <p>8 to take advantage of a group of people that have</p> <p>9 been already devastated by a storm. But that they</p> <p>10 had the legal argument that was more -- that was</p> <p>11 correct. They had the right to charge that.</p> <p>12 Q. When you're referring to "they," this is</p> <p>13 LNR Partners?</p> <p>14 A. LNR, the servicer for the mortgage.</p> <p>15 Q. LNR Partners, just so we're clear, has</p> <p>16 nothing to do with Nationwide, right, sir?</p> <p>17 A. Nothing to do with Nationwide.</p> <p>18 Q. LNR Partners demanded that plaintiffs pay</p> <p>19 over insurance proceeds that Nationwide had given to</p> <p>20 plaintiffs?</p> <p>21 A. Correct.</p> <p>22 Q. That was well over a million dollars that</p> <p>23 they demanded be paid over to LNR, right?</p> <p>24 A. Right.</p> <p>25 Q. That was shortly after the storm, right?</p>

15 (Pages 54 to 57)

Ralph Brockman 1/19/2010

Page 58

1 A. It was -- it was a good while after the
2 storm. We still had the -- the loss of rent coming
3 in from Nationwide. So we could service the
4 mortgage for a period of time. But just like
5 WorldClaim couldn't provide anything for a number of
6 months, now Lewis hadn't provided anything, now
7 we're running out of money. So we have to sell the
8 properties as is.

9 Q. Just so I'm clear, your attorneys paid
10 over the insurance proceeds that Nationwide gave to
11 plaintiffs?

12 A. I'm not sure that we did immediately. I
13 think we used those funds to -- that was some of the
14 cash we had in the bank. We ultimately paid the
15 mortgage off with the funds from the sale of the
16 properties.

17 Q. Putting aside the loss of rent payments,
18 the property damage payments that Nationwide had
19 been paid, those were all handed over to LNR at
20 their demand; isn't that --

21 A. I'm not certain. It was handed over to
22 us. It was paid to Sunquest, the managing agent.
23 He deposited the money and my brother's testimony
24 follows tomorrow. How much of that was paid to LNR,
25 I don't know. I do know LNR subsequently was paid

Page 59

1 in full, but primarily we couldn't pay it off
2 without selling the properties. I mean, we owed way
3 more money than the -- than the insurance that we
4 collected from Nationwide.

5 Q. Well, we'll go over with Mr. Brockman,
6 your brother, Bill Brockman, tomorrow. Is it your
7 testimony he has more knowledge about the
8 litigation than --

9 A. Not the litigation. He has more knowledge
10 about you asked was the mortgage -- was the
11 insurance proceeds paid to LNR. I don't recall that
12 they were. I don't think LNR was paid anything but
13 the monthly payments, but Bill is better -- would be
14 able to testify to that. I don't think they were
15 paid anything but the monthly payments until we got
16 the proceeds from the sale.

17 Q. Let me go through some more documents
18 regarding LNR. Let's finish up looking at
19 correspondence and communications with Mr. O'Leary.
20 (Exhibit 329 - March 17 E-mail marked for
21 identification.)

22 Q. Let me hand you Defense Exhibit 329. This
23 is Bates numbered CH 2359. It's an E-mail dated
24 March 17th --

25 A. Yes, sir.

Page 60

1 Q. -- from Mr. O'Leary to you?

2 A. Yes, sir.

3 Q. It says, "Ralph, beyond what I've already
4 sent, please let me know if the following is what
5 you want as a follow-up to all that I've sent
6 already. Part one of my assignment is to, (a),
7 develop a case why the carrier owes you more, a lot
8 more than what they've paid you using forensics and
9 standard practice as applies to this policy argument
10 for your case." Did I read that correctly?

11 A. Yes.

12 Q. He then writes, "The aid you in
13 disconnecting for WorldClaims at minimum cost." We
14 discussed that already, right, sir?

15 A. Yes, sir.

16 Q. He then writes, "Aid you in reducing the
17 cost of WorldClaim's replacement, XL Public
18 Adjusters, down from seven percent." Did I read
19 that correctly?

20 A. Yes.

21 Q. Did plaintiffs retain a public adjusting
22 firm named XL Public Adjusters to assist them in
23 their claim against Nationwide?

24 A. Did we?

25 Q. I asked the question, did plaintiffs

Page 61

1 retain XL Public Adjusters to assist them in their
2 claim against Nationwide?

3 A. I do not know. I don't believe so. I
4 don't know who XL Public Adjusters is.

5 Q. Do you remember having any dealings with
6 anyone at XL Public Adjusters?

7 A. There was one other gal that made a pitch.
8 We interviewed four or five adjusters.

9 Q. Was that Tammy Lee Crossley?

10 A. One of them was Tammy. She was very
11 valuable. She was on the site the day after the
12 storm to take pictures, and maybe that's her
13 company. I don't know. But we never hired anybody
14 as an adjuster other than WorldClaim. Of course,
15 this is back in March of '08, way before we entered
16 into that second contract. It's still more just
17 inside E-mails that Lewis is sending us before he
18 has this contract.

19 Q. You don't have any information about
20 whether XL Public Adjusters -- strike that.
21 You don't believe that plaintiffs ever
22 actually retained XL Public Adjusters?

23 A. No, sir. I know they didn't.

24 Q. You're not aware of seeing any estimate
25 that XL Public Adjusters generated?

16 (Pages 58 to 61)

Ralph Brockman 1/19/2010

Page 62

1 A. No, I've not. I've never seen an estimate
2 from them that I can recall.

3 (Exhibit 330 - 4/9/2008 E-mail marked for
4 identification.)

5 Q. Let me hand you 330, document Bates
6 numbered CH 2360 to 2361. And this is an E-mail
7 from Mr. O'Leary to you April 9th, 2008, right?

8 A. Yes.

9 Q. He's forwarding something he had
10 previously sent March 26th. This is update on his
11 work that we looked at a moment ago?

12 A. Yes, sir.

13 Q. Now, Number 2.2 in his E-mail, he says,
14 "Find out what XL Public Adjusters had that would
15 benefit the cause and negotiate the deal for them to
16 do the investigative work necessary to develop a
17 replacement estimate for the original WorldClaim
18 estimate." Did I read that correctly?

19 A. Yes, sir.

20 Q. So then he writes in bold, "Negotiated a
21 price of \$5,000 for all of their photos and
22 supporting affidavits in their cooperation as a
23 witness, provided assistance to the insured and
24 establishing an alternative game plan to the
25 redevelopment of the estimates without the premium

Page 63

1 expense of using a public adjuster to implement
2 same." Did I read that correctly?

3 A. Yes, you did. And now that I see that
4 number, it must be Tammy Crossley that owned
5 XL Public Adjusters. They were interviewed early
6 on, but WorldClaim got the contract. But then she
7 had made a number of photographs. I mean, the day
8 after the -- for a solid week, she photographed
9 everything on the properties. And Lewis O'Leary
10 thought that that information was very valuable to
11 building the case and negotiated a price at 5,000,
12 which I agreed to pay.

13 Q. Have you seen those photographs?

14 A. Some of them, but those that he E-mailed
15 to me, some that he attached to his claim.

16 Q. So all the photos -- it's your
17 understanding that all the photographs that he
18 purchased from Tammy Crossley went to O'Leary, not
19 necessarily the plaintiffs files; is that right?

20 A. Yes, sir.

21 MR. GILMORE: Counsel, you may have gotten
22 into this with Mr. O'Leary, Mr. Schultze on Friday
23 at his deposition, but I know we've asked for this.
24 To the extent he has any of these photographs that
25 he purchased from Tammy Crossley that weren't either

Page 64

1 attached to the report or already produced, just ask
2 to confirm that all such documents are in search for
3 and produced.

4 MR. GAUDET: I'll do that again, confirm
5 again. Just out of curiosity, did she not -- did
6 Tammy not -- y'all subpoenaed her, right?

7 MR. GILMORE: Yeah. I know that she
8 produced -- I believe she produced photographs in
9 response to her subpoena, and that to the extent
10 that there's any daylight between what she produced
11 and what Mr. O'Leary has.

12 MR. GAUDET: Got you.

13 MR. GILMORE: Let's take a five-minute
14 break.

15 VIDEOGRAPHER: Off the record at 10:35.
16 (Off the record.)

17 VIDEOGRAPHER: On the record at 10:46.

18 Q. (By Mr. Gilmore) I'm going to hand you
19 what's been marked as Defense Exhibit 180. I turn
20 to the page we're going to look at. It's Page 172,
21 starting at Line 22.

22 (Exhibit 180 - Deposition of
23 Ralph Brockman, Carriage House Case marked for
24 identification.

25 Q. This is a copy of transcript of your

Page 65

1 deposition in the Carriage House case. Did you have
2 an opportunity to read this transcript after it was
3 recorded?

4 A. I had gotten through about half of it. I
5 don't know if I've gotten this far. But I see
6 several Line 22s. Which one?

7 Q. On Page 172. It's the page near the right
8 corner.

9 A. Yes.

10 Q. And I had asked you question by
11 Mr. Gilmore, "Did any element of Mr. O'Leary's
12 computation contingent upon success of settling the
13 claim or prevailing in litigation?" Answer, "That
14 is taboo. He made that clear on the outset, and so
15 did my counsel. Whereas, with WorldClaim,"
16 Mr. Brown answered, "they actually got
17 seven percent." Mr. Brown, "Let him ask his
18 question." Answer, "And okay. I don't know what
19 the difference is." Question by Mr. Gilmore, "Well,
20 prior, did you have a different compensation
21 arrangement with Mr. O'Leary prior to filing this
22 lawsuit?" Answer, "No." Did I read all of that
23 correctly?

24 A. Yes.

25 Q. When you made that statement under oath

17 (Pages 62 to 65)

Ralph Brockman 1/19/2010

<p style="text-align: right;">Page 66</p> <p>1 that time, that was untrue, right, Mr. Brockman?</p> <p>2 A. That's correct.</p> <p>3 Q. Put that down.</p> <p>4 (Exhibit 125 - 9/29/2005 Fax marked for</p> <p>5 identification.)</p> <p>6 Q. I'm going to hand you what's been marked</p> <p>7 as Defense Exhibit 125. You can put that down right</p> <p>8 there. I might go back to it later.</p> <p>9 This is a document produced by Nationwide, Bates</p> <p>10 number NW1SUN4595 through 4604. And it is a</p> <p>11 September 29th, 2005 fax from Leah Solomon at</p> <p>12 LNR Partners to Jim Biggs at Nationwide, attaching a</p> <p>13 letter to Nationwide. If you turn to the second</p> <p>14 page of this document, Bates number 4596, is the</p> <p>15 letter itself. Have you seen that letter before,</p> <p>16 sir?</p> <p>17 A. Yes, I believe I have. I don't know when.</p> <p>18 Q. And it has copied at the bottom,</p> <p>19 "cc: Compass Pointe Partner, care of Sunquest</p> <p>20 Properties, Inc."?</p> <p>21 A. Yes, sir.</p> <p>22 Q. You recall Ms. Solomon sending you a</p> <p>23 carbon copy of this letter she sent to Nationwide?</p> <p>24 A. I recall Sunquest Properties sending it to</p> <p>25 me. I don't think Leah did, but maybe.</p>	<p style="text-align: right;">Page 68</p> <p>1 yourself and your brother, brought suit against LNR</p> <p>2 Partners and the mortgage companies, right?</p> <p>3 A. Yes, sir, I believe so.</p> <p>4 (Exhibit 478 - 12/29/2006 Complaint marked</p> <p>5 for identification.)</p> <p>6 Q. Let me hand you what's been marked as</p> <p>7 Defense Exhibit 478. And this is copy of</p> <p>8 December 29th, 2006 complaint filed in Jackson</p> <p>9 County, Mississippi Chancery Court by the plaintiffs</p> <p>10 here, as well as other entities, against LNR</p> <p>11 Partners and other defendants?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Prior to this complaint being filed, did</p> <p>14 you review it for accuracy?</p> <p>15 A. I'm not sure.</p> <p>16 Q. Have you ever seen this document before</p> <p>17 today?</p> <p>18 A. Yes.</p> <p>19 Q. How about before it was filed, did you</p> <p>20 have opportunity to review it?</p> <p>21 A. I'm not sure, but I think so.</p> <p>22 Q. Sitting here today, are you aware of any</p> <p>23 inaccuracies in this document?</p> <p>24 A. No, sir. No, sir.</p> <p>25 Q. Can you turn to Page 7 of the complaint</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. And Ms. Solomon at LNR Partners writes to</p> <p>2 Nationwide, "Dear Sirs, LNR Partners, Inc. is</p> <p>3 special servicer for the lender and is empowered to</p> <p>4 act on their behalf with regards to the loan and any</p> <p>5 insurance claims where lender has an interest.</p> <p>6 Please be advised that pursuant to the certificate</p> <p>7 of insurance, copy which is attached, the loss payee</p> <p>8 additional insured for any claims under the policy</p> <p>9 shall be made payable to LaSalle Bank National</p> <p>10 Association as trustee for GS Mortgage Securities</p> <p>11 Corporation, too." Did I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. Then underneath that she writes, "Please</p> <p>14 be advised that lender is entitled to hold policy</p> <p>15 proceeds in excess of \$50,000 pursuant to the terms</p> <p>16 of its loan with the borrower insured." Did I read</p> <p>17 all that correctly?</p> <p>18 A. Yes, sir.</p> <p>19 Q. That statement that you made in that</p> <p>20 letter, is it your understanding that's based on the</p> <p>21 mortgage loan agreement for the Compass Pointe</p> <p>22 property?</p> <p>23 A. Yes, sir.</p> <p>24 Q. December 2006, Compass Pointe, as well as</p> <p>25 Carriage House and various partners, including</p>	<p style="text-align: right;">Page 69</p> <p>1 that begins "LNR Partners"? You'll see numbered</p> <p>2 Paragraph 22. You see that, sir?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Plaintiffs wrote in Paragraph 22 in their</p> <p>5 complaint against LNR Partners filed December 26th</p> <p>6 -- 29th, 2006, "In the course of such negotiations,</p> <p>7 LNR received the insurance proceeds from the insurer</p> <p>8 of the property despite repeated requests by the</p> <p>9 partnership to require such funds toward restoration</p> <p>10 of the premises and/or satisfaction of the debt.</p> <p>11 LNR ignored such request and held such proceeds in</p> <p>12 non-interest-bearing escrow account while the</p> <p>13 parties negotiated." Did I read that correctly?</p> <p>14 A. Yes, sir.</p> <p>15 Q. At the time plaintiffs intended that to be</p> <p>16 true statement, right?</p> <p>17 A. Yes, sir. And that's probably what</p> <p>18 happened to proceeds. I guess Nationwide paid it to</p> <p>19 LaSalle.</p> <p>20 Q. Look at next paragraph, which is Paragraph</p> <p>21 23, still on Page 7 of the complaint. In Paragraph</p> <p>22 23 says, "The negotiations between the parties were</p> <p>23 abruptly cut short, however, by a letter sent by</p> <p>24 LNR, acting on behalf of GMAC Commercial Mortgage</p> <p>25 Co. as master servicer, and LaSalle Bank, national</p>

18 (Pages 66 to 69)

Ralph Brockman 1/19/2010

Page 70

1 lender of the loans, dated February 15th, 2006, to
2 the partnerships demanding that the debt remaining
3 on the loan be paid off no later than February 28th,
4 2006. At the time of this demand, the defendants
5 were aware of the fact that alternative financing
6 could not be put in place by February 28th, 2006,
7 nor that a buyer of the properties could be found
8 and a sale consummated by such time. By virtue of
9 this demand, therefore, LNR effectively left the
10 partnerships with the only viable option to sell the
11 properties at a distressed value." Did I read that
12 correctly?

13 A. Yes, sir.

14 Q. At the time that the complaint was filed,
15 plaintiffs intended those statements in Paragraph 23
16 to be true and accurate, right?

17 A. Yes, sir.

18 Q. If you turn to next page, Page 8, you read
19 the last sentence in Paragraph 25. Plaintiffs write
20 in their complaint against LNR Partners, "Finally,
21 despite the fact that they asserted possession and
22 control of insurance proceeds and refused to apply
23 such proceeds towards the restoration of the
24 properties or toward the indebtedness of the
25 properties, the defendants properly charged the

Page 71

1 partnerships a penalty as associated with
2 indebtedness." Did I read all that correctly, sir?

3 A. Yes.

4 Q. At the time that plaintiffs wrote that in
5 their complaint filed against LNR Partners, they
6 intended that to be a true statement, right?

7 A. Yes, sir. But even if they gave us the
8 money, it wasn't enough to restore the properties.

9 Q. It's fair to say you didn't even have the
10 money to begin any of the restoration, right?
11 That's why you sued LNR Partners, correct?

12 A. That's correct, but that wasn't enough.
13 You know, the 700,000 is not going to restore, 6,
14 7 million.

15 Q. And they --

16 A. I don't know. And they were invoking --
17 we were technical default. We -- we ran out of the
18 money to be able to pay the monthly payments. So we
19 took an offense toward them trying to save the
20 800,000 plus penalties they were trying to charge.
21 This case was settled, by the way, for approximately
22 50 percent of what they could have charged us
23 legally. And then, of course, we lost our legal
24 fees, too. We had to pay for those. But it was
25 settled for about 400,000 is my recollection rather

Page 72

1 than the 800,000 that we were exposed to. And they
2 were paid in full with the proceeds from the sale as
3 is.

4 (Exhibit 479 marked for identification.)

5 Q. I'm going to show you what's been marked
6 as Exhibit 479.

7 (Exhibit 481 - E-mail marked for
8 identification.)

9 Q. Let me hand you -- I said "479." Let me
10 hand you what's been marked as 481, which is a
11 document produced by plaintiffs, Bates numbered
12 CH 1683. And this is a letter prepared by you to
13 Brett Furr?

14 A. Yes, sir.

15 Q. Brett Furr is an attorney who is
16 representing LNR Properties; isn't that right?

17 A. I'm not sure. I don't -- it just don't --
18 it doesn't ring a bell right now. This is
19 definitely an E-mail from me at taylorportion.com it
20 says.

21 Q. You don't recall sitting here who
22 Brett Furr is?

23 A. No, sir. You can enlighten me and I'm
24 sure I will, but this is a long time ago. But I --
25 well, I copied John Landry, who is my personal

Page 73

1 attorney in Monroe, tax attorney, my brother, and
2 Leah Solomon with LNR. It'll come back, but it
3 doesn't ring a bell right now.

4 (Exhibit 480 - E-mail marked for
5 identification.)

6 Q. Let me -- I'll show you what's been marked
7 as Exhibit 480.

8 A. It -- it probably -- is he with -- he
9 shared apparently somewhere some date --
10 unfortunately this E-mail is not dated -- an
11 appraisal. It must be LNR. Maybe the LNR got an
12 appraisal as is themselves. And then ultimately
13 shared it with us, perhaps after our lawsuit or
14 prior to. But at some point, they shared these
15 appraisals.

16 Q. All right.

17 A. I don't know who he is with.

18 Q. I'll show you a letter with your attorneys
19 from Brunini to Mr. Furr concerning the dispute with
20 LNR Partners. You've seen that document which is
21 marked Defense Exhibit 480. Does that refresh your
22 memory as to who Mr. Furr is?

23 A. Let me -- it shows here he's with Taylor,
24 Porter, Brooks & Phillips, not LNR. This is written
25 by our attorney that filed a claim against LNR.

19 (Pages 70 to 73)

Ralph Brockman 1/19/2010

Page 74

1 Q. Let's look at Defense Exhibit 481.
2 Perhaps it will refresh your memory as to this
3 exchange with Mr. Furr. You write, "Brett, as an
4 owner of Carriage House and Compass Pointe and a
5 principal in Sunquest Properties, the managing
6 agent, John Landry has forwarded to my attention
7 your last communication to him, which included an
8 appraisal summary for Carriage House and Compass
9 Pointe." Did I read that correctly?

10 A. Yes, sir.

11 Q. The appraisal summary were appraisals
12 prepared by LNR Partners and the banks valuing the
13 properties?

14 A. I don't know.

15 Q. Sitting here today, you don't recall
16 seeing these appraisals or what they involved?

17 A. Obviously, I write that I was excited to
18 see the appraisal for each complex.

19 Q. That's right. Your next paragraph in this
20 letter you write, "I cannot tell you how excited I
21 was to see the as-is appraisal for each complex,
22 which indicates to me that we should immediately
23 list each complex for sale for the as-is price. And
24 even after commission, what is left would be more
25 than the debt and accrued interest and leave

Page 75

1 something for investors." Did I read that
2 correctly?

3 A. Yes, sir.

4 Q. Seeing that sentence, do you recall
5 receiving appraisals and becoming excited about the
6 prospect of selling the properties afterwards as you
7 write in this document?

8 A. Yes, sir. And I even asked, "Furthermore,
9 please provide me with a copy of each appraisal."

10 Q. Do you know if you've ever seen a copy of
11 appraisal?

12 A. Obviously, I did. And I would say the
13 appraisal would be the realtor's best selling tool.
14 And I'm certain we use those appraisals to help sell
15 them and get the as-is price we got, which was just
16 as I pointed out in this letter enough. It exceeded
17 the mortgage. Each sale exceeded what we owed. At
18 least it was enough to -- to pay off our mortgage
19 and settle the issue with the mortgage company.

20 Q. Let me hand you what's been marked as
21 Exhibit 421.

22 A. I mean, Exhibit 480 apologized for lack of
23 LNR for responding to -- to us. So I still can't
24 place Brett Furr.

25 (Exhibit 421 - 9/23/2005 E-mail marked for

Page 76

1 identification.)

2 Q. And this is another document produced by
3 plaintiffs. It's Bates number CH 2298. It's an
4 E-mail from your brother, Bill Brockman, to
5 sbonds@brockman.com and Lisa Phillips?

6 A. Yes, sir.

7 Q. Who is sbonds@brockman.com. I imagine
8 Sherry Bonds is --

9 A. Yes.

10 Q. -- near the top.

11 A. Yes.

12 Q. I guess my question, who is Sherry Bonds?

13 A. She worked as my secretary for number of
14 years. She now works for my oldest son and she's
15 still in the building. But she retired from that
16 position with me and helps him, my son.

17 Q. Have you seen this document before today?

18 A. I'm certain I have, yes, sir.

19 Q. When you say you're certain you have,
20 you're certain that you have, why do you say that?

21 A. Because I say, "File RWB" here, and that's
22 my initials.

23 Q. So that means that this was put in the
24 Carriage House or Compass Pointe file?

25 A. Yes, sir.

Page 77

1 Q. Similar to the other document we looked at
2 previously, another E-mail?

3 A. Yes, sir.

4 Q. Now, your brother, Bill, writes at the
5 bottom -- we'll work our way from bottom up -- "I
6 have forwarded correspondence from LNR Partners. By
7 so doing, do not construe that I think we should
8 provide them anything, let alone sign the agreement.
9 They are aware we are uninsured to some unknown
10 extent. It is probably in our best interest to keep
11 them somewhat in the dark and/or exaggerate the
12 degrees which we are underinsured." Did I read that
13 correctly?

14 A. Yes, sir.

15 Q. Do you recall having discussion with your
16 brother, Bill Brockman, regarding plaintiffs being
17 underinsured or uninsured to some unknown extent
18 after hurricane Katrina?

19 A. Well, obviously, we were, if we don't have
20 enough insurance to replace the complex. But that
21 -- I don't -- I don't know how much the total
22 insurance policy was. But this is Bill's
23 observation, not mine.

24 Q. This is dated September 23rd, 2005,
25 correct?

20 (Pages 74 to 77)

Ralph Brockman 1/19/2010

<p style="text-align: right;">Page 78</p> <p>1 A. Yes, sir.</p> <p>2 Q. And at that point, Nationwide had not even</p> <p>3 issued all the payments for the payments it did</p> <p>4 issue to plaintiffs for hurricane Katrina damage,</p> <p>5 right?</p> <p>6 A. Correct. I think what Bill is referring</p> <p>7 to is we know that we don't have flood coverage. So</p> <p>8 there's going to be a shortfall of underinsurance.</p> <p>9 We were not in the flood zone, ironically. We</p> <p>10 didn't have flood in category five previously,</p> <p>11 Camille. So we did not buy flood insurance. It was</p> <p>12 not required. So he knows we're going to be</p> <p>13 underinsured by that portion of the flood damage. I</p> <p>14 think that's what he's referring to here.</p> <p>15 Q. Now, the last sentence he says, "I told</p> <p>16 them we were hopeful regarding the loss of rents for</p> <p>17 Carriage House, less certain regarding Compass</p> <p>18 Pointe." Do you know what he meant by that?</p> <p>19 A. Where is that again? You say last</p> <p>20 sentence?</p> <p>21 Q. The last sentence in Bill Brockman's</p> <p>22 E-mail.</p> <p>23 A. I don't know exactly what he meant, no,</p> <p>24 sir. But you'll have him tomorrow.</p> <p>25 Q. You can put that aside.</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Now, I'm confused. I thought that your</p> <p>2 prior testimony were you were the managing partner</p> <p>3 of these partnerships?</p> <p>4 A. Well, I did, too. These are family</p> <p>5 partnerships that did not elect formally a managing</p> <p>6 general partner. That's very tough in a family to</p> <p>7 let one person be the boss of all things.</p> <p>8 Sunquest Property was the managing agent.</p> <p>9 And my brother was the focal point person for</p> <p>10 Sunquest Properties. So the day-to-day operations</p> <p>11 are actually managed by Sunquest. And my brother,</p> <p>12 Bill, is the point person. So he alleges here that</p> <p>13 he is the managing partner on this document, which</p> <p>14 is a legal document prepared by -- I don't know the</p> <p>15 attorney here. And but throughout the proceedings,</p> <p>16 I have been the point person for the family. That</p> <p>17 is the family comes to me and I go to Sunquest for</p> <p>18 brother Bill. But he is representing himself, you</p> <p>19 are quite correct, as managing partner.</p> <p>20 So I guess in the sense we both have acted</p> <p>21 that way. He in operating the day-to-day affairs of</p> <p>22 the partnerships, and me in my relationship with the</p> <p>23 family members.</p> <p>24 Q. Turn to the next page of this declaration</p> <p>25 from your brother that was submitted on behalf of</p>
<p style="text-align: right;">Page 79</p> <p>1 (Exhibit 477 - Declaration marked for</p> <p>2 identification.)</p> <p>3 Q. I'm going to hand you what's been marked</p> <p>4 as Defense Exhibit 477, which was a declaration</p> <p>5 filed in plaintiffs' lawsuit against LNR Partners.</p> <p>6 Have you seen this document before, sir?</p> <p>7 A. Yes.</p> <p>8 Q. And this is declaration from your brother,</p> <p>9 William G. Brockman, right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. At the time this was prepared and -- and</p> <p>12 signed by him and submitted in this case, did you</p> <p>13 have an opportunity to review it?</p> <p>14 A. I do not recall that I reviewed it prior</p> <p>15 to this filing.</p> <p>16 Q. Now, he writes in Paragraph 2, "I serve as</p> <p>17 managing partner of Compass Pointe Apartments</p> <p>18 Partnership and the Carriage House Apartment</p> <p>19 Partnerships, which are partnerships created in</p> <p>20 connection with the ownership of two apartment</p> <p>21 complexes commonly known as the Carriage House</p> <p>22 Apartments and the Compass Pointe Apartment's</p> <p>23 properties located in Jackson County, Mississippi."</p> <p>24 Did I read that correctly?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 81</p> <p>1 both Carriage House Partners and Compass Pointe</p> <p>2 Apartments Partnerships. Paragraph 5, this</p> <p>3 declaration reads, "Hurricane Katrina caused</p> <p>4 catastrophic damage to both parties, rendering the</p> <p>5 Carriage House Apartments a hundred percent</p> <p>6 untenable and Compass Pointe Apartments</p> <p>7 approximately 55 percent untenable." Did I read</p> <p>8 that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. With respect to Compass Pointe Apartments,</p> <p>11 as you sit here today, that 55 percent untenable is</p> <p>12 accurate according to plaintiffs?</p> <p>13 A. Initially, the difference in design</p> <p>14 between the two is Carriage House are walk-up</p> <p>15 apartments with the kitchen units downstairs and</p> <p>16 bedrooms upstairs. Compass Pointe is designed, they</p> <p>17 are flats, one-story flats, two-story flats. You</p> <p>18 walk up the stairway outside the building to the</p> <p>19 second floor.</p> <p>20 So initially, there were still some</p> <p>21 tenants residing in this second floor of -- of</p> <p>22 Compass Pointe. And that -- that went away pretty</p> <p>23 fastly as moisture and mold took place. He probably</p> <p>24 can testify when that began. But early in the game</p> <p>25 we felt like there was some units on the second</p>

21 (Pages 78 to 81)

Ralph Brockman 1/19/2010

<p style="text-align: right;">Page 82</p> <p>1 floor that people did continue to reside in because 2 there was no housing in the area anyway. And they 3 lived in some horrible circumstance, which Donna 4 Bass can testify to, because there was no alternate 5 housing. Now, that didn't last very long before 6 everything became untenable. But there was a period 7 of time that -- that he contemplated that -- that 8 45 percent of them were tenable. 9 Q. Let's look at March -- the date on Page 3 10 of this declaration is March 22nd, 2007, right, 11 Page 3 of the declaration? 12 A. Yes, sir. 13 Q. By his signature? 14 A. Yes, sir. 15 Q. And that's well after -- almost a 16 year-and-a-half after hurricane Katrina, right? 17 A. That's right. 18 Q. Let's go back to Paragraph 5. He says, 19 "Subsequently, the city of Gautier, Mississippi 20 condemned all apartments at Carriage House and the 21 city of Pascagoula, Mississippi condemned all 22 downstairs apartments at Compass Pointe." Did I 23 read that correctly? 24 A. Yes, sir. 25 Q. It references Exhibits 1 and 2 which are</p>	<p style="text-align: right;">Page 84</p> <p>1 payments due on September 5th, 2005." Did I read 2 that correctly? 3 A. Yes, sir. 4 Q. And plaintiffs Sunquest, Compass Pointe, 5 and Carriage House intended that to be a true 6 statement at the time they submitted this 7 declaration to the court, right? 8 A. Yes. 9 Q. Paragraph 7 reads, "Pursuant to the terms 10 of the loan documents, the required insurance was in 11 place in effect for both of the properties when 12 hurricane Katrina made landfall on August 29th, 13 2005. In September and October 2005, the 14 partnership received checks totalling approximately 15 1.2 million in insurance proceeds for the property 16 damage to both properties. These were turned over 17 by the partnerships to LNR." Did I read all that 18 correctly? 19 A. Yes, sir. 20 Q. At the time that plaintiffs Sunquest, 21 Carriage House, and Compass Pointe submitted this 22 declaration, they intended that statement in 23 Paragraph 7 to be true, right? 24 A. Yes, sir. That clears up a earlier 25 question you had of me and I was unaware whether the</p>
<p style="text-align: right;">Page 83</p> <p>1 attached to this declaration. I believe we've seen 2 one of these before. The first one is the 3 condemnation notice for Carriage House, right? 4 A. Yes, sir. 5 Q. The second one is the condemnation notice 6 for the Compass Pointe Apartments, right? 7 A. Yes, sir. 8 Q. And in large letters at the bottom, it 9 says, "All downstairs apartments." Those were the 10 ones condemned, right? 11 A. Yes. 12 Q. Not the upstairs apartments? 13 A. That's October of '05. 14 Q. Are you aware if at any later point the 15 city of Pascagoula condemned upstairs apartments at 16 Compass Pointe? 17 A. I'm not. 18 Q. Sitting here today, to the best of your 19 knowledge, the second-story apartments at Compass 20 Pointe were never condemned? 21 A. I don't know, but my brother can tell you. 22 Q. That's fair. We'll ask him tomorrow. 23 Turn to Page 3 of his statement of his declaration. 24 It says, "The partnership stopped paying the monthly 25 payment due on the mortgages beginning with the</p>	<p style="text-align: right;">Page 85</p> <p>1 insurance proceeds were tendered. This indicates 2 they were. 3 Q. Sitting here today, can you tell the jury 4 what amount Nationwide would have had to pay that 5 would not have been claimed by LNR Partners 6 following hurricane Katrina? 7 A. Repeat that. 8 Q. Sitting here today, can you tell the jury 9 what amount plaintiffs think had Nationwide paid LNR 10 Partners would not have had paid over to them 11 pursuant to loan agreements? 12 A. Gosh, LNR was just as hardball as you 13 could get. I don't know. If -- if -- if they felt 14 we had enough to rebuild, would they allowed us to 15 rebuild? That's the question you'd have to ask LNR. 16 I don't know. Had we received enough to rebuild, 17 normally, that's happened to us before on this 18 property on a loan and we rebuilt it. There was no 19 hitch at all. 20 We had the loss that Nationwide covered 21 with Georges. It was a different mortgage company. 22 We subsequently refinanced and LNR was the servicer 23 and I can't answer that. I just don't know what 24 their position would be. But I think they were 25 aware that the replacement cost because they got</p>

22 (Pages 82 to 85)

Ralph Brockman 1/19/2010

Page 86

1 that in-house appraisal, you know, they were aware
2 that the replacement cost was much more than the
3 insurance proceed. So they then made their demands
4 for all the proceeds.

5 MR. GILMORE: We can go off the record to
6 change the tape.

7 VIDEOGRAPHER: Off the record at 11:19.
8 End of tape two.

9 (Off the record.)

10 VIDEOGRAPHER: Beginning tape three. On
11 the record at 11:20.

12 (Exhibit 1 - Policy marked for
13 identification.)

14 Q. (By Mr. Gilmore) Let me hand you what's
15 been marked as Defense Exhibit 1, and it's Bates
16 numbered NW1-SUN15 through 97 -- I'm sorry --
17 through 110. Have you seen this document before
18 sir?

19 A. I haven't had a chance to review it. I'm
20 not certain. I'm not certain. I don't see where
21 I've initialed it to be filed or anything.

22 Q. Well, this was produced by Nationwide. My
23 question is, have you seen a copy of this? It's the
24 -- it reads on the first -- first page, "It's true
25 and correct" -- "a true copy of Policy 63BP139742003

Page 87

1 issued to Sunquest Properties, Inc., effective
2 November 11, 2004 to November 11, 2005." Did I read
3 that correctly?

4 A. Yes, sir.

5 Q. And if you turn to the third page of that
6 document, you'll see on Page Bates number 17, middle
7 of the page it has the described premises located at
8 "41 Chicot Street, Pascagoula"?

9 A. Yes, sir.

10 Q. That's Compass Pointe property, right?

11 A. Yes, sir, I believe so.

12 Q. Have you ever seen a copy of this policy
13 for the Compass Pointe properties with Nationwide?

14 A. I don't recall. Acquiring insurance is
15 one of the functions of the managing agent, Sunquest
16 Properties. I'm fairly certain -- and my brother
17 can testify to this -- that when we bought these
18 properties, we assumed -- assumed the financing that
19 was in place and raised capital from the partners.
20 And I'm also fairly certain that the insurance in
21 place was with Nationwide, and we continued that
22 relationship. I believe the firm was Fletcher or
23 something down here locally.

24 Q. Jay Fletcher?

25 A. Yes, sir. I believe that was -- yes, sir.

Page 88

1 I know that he was the agent for selling the
2 insurance. So this -- this would probably be
3 something that was submitted to Sunquest for sure.

4 I don't recall seeing the policies itself. I

5 usually bottom line when we got quotes during the
6 year for all of our properties. My brother would
7 submit those to me. Not the policies itself, later.

8 I trusted his due diligence to make sure the
9 policies were all -- you know, I just looked at the
10 total premium and the bids that were submitted to
11 make sure that we had reputable companies. So that
12 -- I don't recognize it, but I don't question that
13 it is what you say it is.

14 Q. Would your brother, Bill Brockman, have
15 more knowledge about the policies that were in
16 place?

17 A. Yes, sir.

18 Q. Have you ever read any insurance policies
19 for either of the plaintiffs' properties?

20 A. No, sir.

21 Q. Sir, you understand that this policy by
22 terms excludes coverage for damage caused by
23 floodwater, right?

24 A. Yes, sir. That came -- I'm certain this
25 is the same as the one we went over with Carriage

Page 89

1 House. And in those depositions, I recall you
2 reading the exclusions. I'm certain this one
3 probably has the same. However, you haven't
4 outlined what page they're on.

5 Q. Well, and we can go through them. I guess
6 my -- my question I want to ask you first is whether
7 you understand -- or whether you're alleging -- I
8 think you answered prior in Carriage House case was
9 no. Is it the same in this case, Compass Pointe is
10 not claiming that they're owed any money for damage
11 caused by flood under Nationwide policy?

12 A. Absolutely. We understood from the word
13 "go" that's an exclusion and we were not covered.

14 Q. And generally speaking, putting aside
15 whether you've ever seen copy of the actual policy
16 itself, you understand that insurance policy is a
17 contract, right?

18 A. Yes, sir.

19 Q. And it's a contract that lays out the
20 coverages and amounts of coverage that the insurer
21 is providing the insured; fair to say?

22 A. Yes, sir.

23 Q. Other than what's in this policy, are you
24 aware of any other documents, any other kind of
25 insurance policies or anything else that provide

23 (Pages 86 to 89)

Ralph Brockman 1/19/2010

Page 90

1 insurance coverage to plaintiffs for the properties
2 that are in this lawsuit?
3 A. I don't have them here, but I'm certain we
4 probably had liability insurance, also. It's
5 typical. And then you have an umbrella policy that
6 comes into cover properties beyond the what they
7 call underlying coverage. But other than that, I
8 doubt there would be any other insurance. Certainly
9 not for the physical plant.
10 Q. There are -- have plaintiffs made any
11 claims for damage to Compass Pointe property based
12 on any kind of insurance document other than their
13 Nationwide policy?
14 A. Not that I'm aware of.
15 Q. And I know we're here for the Compass
16 Pointe case. I believe I asked before, but if I
17 didn't. Was the same true for Carriage House,
18 acknowledge --
19 A. Yes.
20 Q. Carriage House has not filed any claim for
21 insurance coverage for damage incurred during
22 hurricane Katrina --
23 A. None.
24 Q. -- other than through Nationwide policy?
25 A. Yes, that's correct.

Page 91

1 Q. Brockman Enterprises has kind of umbrella
2 organization that has interest in a lot of
3 properties through partnerships?
4 A. I believe the umbrella on this was
5 actually Sunquest. It's a policy that covers -- we
6 had like 45 different properties and we have an
7 umbrella comes in and each property has its
8 underlying insurance for -- for liability. But if
9 there's something catastrophic that exceeds the
10 underlying, then the umbrella comes in and covers
11 the properties.
12 Q. Does that umbrella policy provide coverage
13 for property damage or just liability?
14 A. Just liability.
15 Q. Are any of the properties that are managed
16 by Sunquest Properties, to your knowledge, insured
17 through Nationwide policy?
18 A. You'll have to ask my brother. My
19 knowledge, these were the only two recollection.
20 And that changes every year. There may be a new
21 company that's more competitive than others. But I
22 had such a pleasant experience with Nationwide on
23 Georges and I insisted we continue to -- to write
24 insurance with them, even on years when their
25 premiums were more.

Page 92

1 Q. Did plaintiffs ever make any efforts to
2 claim benefits or credits under the Mississippi
3 GO Zone Program?
4 A. Not on these properties. I don't know.
5 There was some -- look, we were scraping for any
6 possible alternatives to -- to be able to sell and
7 dispose of the properties.
8 Q. What is your understanding of what the
9 GO Zone Program was?
10 A. The GO Zone was -- it's a program that
11 federal government issued to try to help those
12 restore properties. And if you were in the GO Zone,
13 you were allowed to have what they called immediate
14 charge-off. Another investor, for instance, can
15 write off instead of over 20 years or 30 years, I
16 think, it's life of building. They can write it all
17 off the first year, half of it, the GO Zone.
18 So if one spent let's say \$10 million in
19 restoring a property in the GO Zone, normally
20 instead of having a 30-year life for physical plant,
21 you could write half of that off in one year. So
22 \$5 million of the 10 you spent could be written off
23 in one year. So if you have a tax liability in your
24 partnership with a lot of tax liability, that's a
25 beautiful write-off. It was meant to help restore

Page 93

1 damaged properties in the GO Zone, which is
2 primarily south Mississippi, Louisiana, and parts of
3 Texas.
4 If, however, you ever sold the property
5 before the holding period, then you had to recapture
6 all of that in those taxes you saved as -- as
7 ordinary income. So it's a nice front door, but
8 it's a pretty ugly back door if you get out of it
9 unless you keep it for the entire holding period.
10 Q. Did you, as the owner of Brockman
11 Enterprises, invest in any properties after
12 hurricane Katrina in the GO Zone?
13 A. I looked at some and I bought one and it
14 was in New Orleans called West Chase. But after
15 seeing the back door and, you know, if you sell a
16 property, you're entitled to long-term capital gain
17 if you've held it more than a year. And that tax
18 rate for federal purposes is 15 percent. The state
19 is another five usually.
20 Q. Lower than ordinary income?
21 A. Lower than ordinary. But if you got the
22 GO Zone tax rate, the recapture is ordinary. And so
23 -- and I looked at them hard to see, golly, should I
24 take advantage of it? I opted not to because my
25 ordinary tax is, what, 39 percent now. I think it's

24 (Pages 90 to 93)

Ralph Brockman 1/19/2010

Page 94

1 36 plus 10 surtax, 39.6 percent, or something like
2 that. So my ordinary income tax right at 40 percent
3 is higher than the federal tax. It's higher than
4 the 15 that the long-term capital gain. So the
5 back-door penalty is so onerous and I elected to
6 waive it and not even take the GO Zone tax credits
7 on that. That's the only property I bought in the
8 GO Zone.

9 Q. When did you buy the West Chase property?

10 A. I don't know exactly. I've had it
11 probably two or three years.

12 Q. That was in two or three years, either
13 2006 or 2007?

14 A. I would say that. I can find the date
15 exactly.

16 Q. Was that the property you invested in with
17 David Pilger and Greg Stewart?

18 A. Yes.

19 Q. And how much -- were there renovations
20 involved with that property?

21 A. Oh, yes, major.

22 Q. Had that property been damaged by
23 hurricane Katrina?

24 A. Oh, yes, yes.

25 Q. How much did you and Mr. Pilger,

Page 95

1 Mr. Stewart have to spend to renovate that property?

2 A. Gosh, I'd have to go to the books. I
3 mean, I can't remember. It was a lot of money.

4 Q. I'm asking you not as Carriage House
5 representative, but just as Brockman Enterprises; is
6 that fair?

7 A. Yes, sir.

8 Q. As Brockman Enterprises, how were you able
9 to fund the financing of renovating the West Chase
10 property in conjunction with Mr. Stewart and
11 Mr. Pilger?

12 A. Well, we each put up a pretty substantial
13 amount of money and the finance was provided by
14 inner construction loan.

15 Q. You borrowed along with Mr. Pilger and
16 Mr. Stewart?

17 A. Yes.

18 Q. The three of you borrowed a loan to
19 renovate West Chase?

20 A. Yes, sir.

21 Q. Do you remember when that financing was
22 put in place?

23 A. Not exactly, but it was almost
24 immediately. We got the loan approved before we
25 started it.

Page 96

1 Q. How long did it take to renovate
2 West Chase?

3 A. Probably say it was a year. It was 380
4 units. It was a lot of buildings, a lot of units.

5 Q. Do you know if Mr. Pilger, Mr. Stewart
6 were able to claim GO Zone credits for the purchase
7 and renovation in Compass Pointe property?

8 A. They could have possibly. Certainly would
9 have qualified, but I don't know if they did. I
10 understood after the fact they took one of the
11 properties and converted into condos and sold it to
12 investors and they came out pretty good -- real good
13 by doing that. I don't know if investors came out
14 good because of this back-door penalty. But the
15 investors were probably buying for those tax credits
16 to get that immediate write-off. Now, that's
17 selling each individual unit and I think they did
18 that on Carriage House. I don't -- they were
19 deposed, too. I don't know why you didn't ask all
20 of that to them, but -- but indeed, they did sell
21 those units and they came out good by reselling them
22 after they were completely renovated.

23 In fact, that's what -- when I found that
24 out, that's what developed as the ongoing
25 relationship a little bit. Golly, that's -- let's

Page 97

1 possibly do the same at West Chase.

2 Q. Was it your understanding that you had to
3 be purchasing the property in order to get the
4 GO Zone?

5 A. Yes. You had to be the owner. You had to
6 purchase it. You could have -- I think you could
7 still -- you qualified even if you owned it with the
8 loss because it's the improvements that would
9 qualify for in the GO Zone. The acquisition price
10 cannot be accelerated. In other words, you bought a
11 property for 5 million. You spent 10 million
12 renovated. You cannot accelerate the acquisition
13 price half in the first year. Only the money you
14 spent, the 10 million in renovate. But it -- but
15 yes, you would qualify for the renovation cost if
16 you're in the GO Zone.

17 And that's my understanding of tax law.
18 But, golly, that law is very thick. I mean, a tax
19 attorney would have to explain all of it.

20 Q. Did any of the partners in Compass Pointe
21 contribute and join the partnership -- the ownership
22 group that bought and renovated the West Chase
23 Apartments complex?

24 A. The only two that have been -- were -- I
25 don't even know if they were partners in Compass

25 (Pages 94 to 97)

Ralph Brockman 1/19/2010

Page 98

1 Pointe. I don't know their relationship who
2 actually bought it. But I understood that
3 David Pilger and Greg Stewart were two individuals
4 that were involved in Compass Pointe, but they
5 brought in some other partners. I don't know who
6 they were.

7 Q. Let me clarify my question. At the time
8 that plaintiffs in this lawsuit, one of which is
9 Compass Pointe Apartments Partnership, owned the
10 property, there were several partners in Compass
11 Pointe Partnership, right?

12 A. When we owned it?

13 Q. Yes.

14 A. Yes.

15 Q. Did any of those owners join you in
16 purchasing and renovating the West Chase Apartment
17 complex?

18 A. No, sir.

19 Q. How long did it take for David Pilger and
20 Greg Stewart, buyers of Compass Pointe complex, to
21 renovate the property from start to finish?

22 A. I don't know exactly, but I think it was
23 probably six, seven months, maybe nine, but you'd
24 have to ask them.

25 Q. Do you know about approximately when they

Page 99

1 started renovating Compass Pointe?

2 A. Oh, it was immediate.

3 Q. When you say "immediate," what date?

4 A. Immediate upon purchase.

5 Q. Did they start renovating prior to Compass
6 Pointe?

7 A. I'm not so certain they didn't jump the
8 gun on one of them and start. You know, part of it
9 is removing debris. You're not starting to build,
10 but you're removing debris and the sheet rock and,
11 you know, all of that. I think they did that when
12 the -- as soon as the ink was dry on the contract.
13 Before it was actually executed, I think they
14 started removing debris on one of them for certain.
15 But it was -- but it was immediate. Once we cut our
16 deal and they bought it, they started immediately.
17 They -- they had mobilized and were ready to go and
18 it impressed me that -- how fast they moved.

19 Q. I'm going to talk with you about what
20 happened at Compass Pointe during immediately after
21 hurricane Katrina. Let's start with when hurricane
22 Katrina happened the end of August 2005, who of
23 employees for the plaintiffs was at the property at
24 the time hurricane Katrina?

25 A. Donna Bass was the project manager, both

Page 100

1 of them. We had what we called a resident manager
2 and she was the manager. She was an employee of
3 Sunquest Properties.

4 Q. And do you know if she was at the property
5 during the storm?

6 A. At one of them I know during she rode the
7 storm out, stayed down there. She can't live in
8 both places. My brother will have to tell you where
9 she lived.

10 Q. Do you know of any employees of either
11 Compass Pointe or Sunquest other than Donna Bass?
12 Do you know if any of them rode the storm out at the
13 Compass Pointe property?

14 A. No, I don't. I don't know if there were
15 any others. There may have been, but I'm not aware.

16 Q. And at what point were representatives of
17 plaintiffs able to get into the property after
18 hurricane Katrina to inspect what had happened?

19 A. Donna could go in that very next day when
20 the storm subsided and the floodwaters receded,
21 which was pretty quickly.

22 Q. Have you had conversations with Donna Bass
23 as to what she saw on her first trip back?

24 A. Yes. But, you know, just the horror, the
25 damage.

Page 101

1 Q. Do you know when she actually was at the
2 property again after hurricane Katrina?

3 A. During it, as I understood it.

4 Q. Do you know if Donna Bass took photographs
5 when she first returned?

6 A. Yeah, she took photographs. And that
7 other young lady that was making a pitch took the
8 most.

9 Q. Tammy Crossley?

10 A. Yes. But Donna took her own photographs,
11 also. It's amazing. One of the most shocking
12 things that came out that I saw in those photographs
13 and when I personally viewed it is you would
14 literally see a room sometimes without any windows
15 blown out, complete water stains all over the second
16 floor, and you wouldn't understand why. You would
17 see seaweed in that room. You wouldn't understand
18 why. And I later found out that the seals on the
19 windows from the force of those hurricane winds will
20 actually blow water through and around the seal and
21 seaweed around the seal. And it absolutely shocked
22 me, but I saw the photographs and I saw it myself.

23 Q. Your testimony that you yourself saw
24 seaweed inside the buildings at Compass Pointe?

25 A. Absolutely.

26 (Pages 98 to 101)

Ralph Brockman 1/19/2010

Page 102

1 Q. Was that on the first floor or second
2 floor?
3 A. Oh, I mean, we saw it -- some of it on the
4 second floor. Obviously, you can understand where
5 windows shattered and blown out. But there were
6 some windows weren't shattered and you could still
7 see it.
8 Q. How many units do you recall seeing
9 seaweed?
10 A. I'm not certain. I don't -- I walked
11 through probably half the buildings and half the
12 units. Saw the same old, same old, same old.
13 Q. You say you walked through about half the
14 units at Compass Pointe?
15 A. Yes, sir.
16 Q. Do you remember which ones specifically?
17 A. No, sir.
18 Q. Did you walk through first story, second
19 story, or both?
20 A. Both.
21 Q. When did you first personally walk through
22 Compass Pointe after the storm?
23 A. Well, I'm not certain whether it was a
24 week or two after the storm, but pretty quickly.
25 And we met with Jim Biggs with Nationwide I think it

Page 103

1 was a week after the storm. And Jim Biggs is the
2 same man that -- that's -- that was represented
3 Nationwide under Georges. And -- and they had work
4 staff putting blue tarpaulins on all the buildings
5 on both sides.
6 Q. You testified about this earlier. It was
7 your belief that he was the person who had adjusted
8 this claim in hurricane Georges, which had been I
9 guess about seven years prior to hurricane Katrina.
10 Now, I'll represent to you that Mr. Biggs testified
11 he hadn't been involved in adjusting that claim.
12 I'm curious as to how you came to believe that he
13 had been involved in handling hurricane Georges
14 claim for either of these two properties?
15 A. Well, he was on the site. Once again, we
16 were securing it. He didn't physically have a crew
17 that installed the blue tarpaulins during Georges,
18 but there was a contractor that was engaged by
19 Nationwide, by Jim Biggs representing Nationwide, to
20 put on those blue tarps.
21 Q. This is hurricane Georges?
22 A. This is hurricane Georges. He inspected
23 virtually every unit and he would estimate the
24 damage. And I just -- since he was estimating the
25 damages, I assumed that he was putting pencil to the

Page 104

1 price. He's estimating the scope for certain.
2 That's where you start. And I just assumed that he
3 -- after he detailed the scope of work in Georges,
4 that he was doing the -- the estimate of cost, also.
5 And he testified -- you're telling me now that he
6 didn't. But he did estimate the scope of the
7 damages. I know that. And he was also doing the
8 same thing with a much, much larger crew on the
9 Katrina claim.
10 Q. So your recollection that when Mr. -- when
11 you visited the site at Compass Pointe and Carriage
12 House after hurricane Katrina, you saw Jim Biggs and
13 you recognized him?
14 A. Oh, yes, sir.
15 Q. And did you talk with him --
16 A. Oh, yeah.
17 Q. -- about his prior work on these
18 properties during hurricane Georges?
19 A. Yes, sir.
20 Q. And it's your testimony he testified -- he
21 told you -- he talked with you about having
22 previously worked on adjusting the properties?
23 A. Well, I mean, I met him at the properties,
24 the same properties after Georges. I don't recall
25 him talking about the Georges, but I know I said

Page 105

1 something like, "Here we go again." You know, "It's
2 been a long time, but here we go again." And so I
3 thought he would be performing the same duties.
4 Q. You didn't have any issue with how he had
5 adjusted -- you and Nationwide had adjusted your
6 hurricane Georges claim, right?
7 A. No, not at all. You'll have to
8 understand, though, we had a construction company
9 owned that I sold my son in Louisiana in Monroe.
10 And we were able to -- to mobilize our own crews
11 from Louisiana. If we had tried to use the crews on
12 the coast that were available, we would have never
13 gotten it in for what Nationwide paid then.
14 Q. Is that hurricane Georges?
15 A. Yes, sir. I mean, these guys have more
16 work they can possibly get to. So what do they do
17 with the pricing? Boom, boom, boom. They go up,
18 up, up. So what we did, we mobilized our own crews
19 to come down after Georges to hit it hard and fast
20 and furious and get out of there. And the first few
21 years they renovated, boom, that's where they lived.
22 In other words, we didn't have to try to find a
23 house for them. They concentrated on housing for
24 themselves first and then stayed there until the job
25 was finished. We got it in for the budget, but it

27 (Pages 102 to 105)

Ralph Brockman 1/19/2010

Page 106

1 would -- the cost of that, we would have never done
2 it if we had to use local suppliers and local
3 subcontractors because they just had more work than
4 they could get to.

5 Q. That was -- the construction company you
6 used renovated hurricane Georges damage, that was
7 company owned by your son; is that correct?

8 A. Yes, sir. I sold Brockman Builders,
9 Incorporated to my oldest son.

10 Q. Is that company still in existence and do
11 construction work?

12 A. Yes, yes.

13 Q. Did you -- I think you testified
14 previously that you -- in your deposition for
15 Carriage House case, that you walked the property
16 with your son. Was that Wes Brockman?

17 A. Yes, sir.

18 Q. Did plaintiffs ask Brockman Builders, your
19 son, Wes Brockman's, company, to prepare and
20 estimate to repair the damage at Compass Pointe?

21 A. No, sir, not a bid or estimate.

22 Q. Did plaintiffs consider ever asking
23 Brockman Builders to perform any of the construction
24 work at Compass Pointe?

25 A. Yes. I was going to consider him

Page 107

1 completely. Had we received enough funds to pay for
2 the windstorm portion, then we would have raised
3 capital amongst the partnership to pay for the flood
4 portion. And he would have been certainly invited
5 as he was the last time to perform because I think
6 he would have been able to do it quicker and
7 cheaper, just like he did the last time. But we
8 never had -- and I wasn't going to waste his time --
9 his time when I didn't even have the funds to pay
10 him.

11 So -- and I didn't do that with other
12 contractors either. There were others who would
13 have liked to done the work, but I knew we didn't
14 have funds. I'm a contractor myself. I don't -- I
15 treat them -- I don't do people that way. I'm just
16 not going to let them waste their time and do an
17 estimate for me and then not even have a chance at a
18 job. So I never got an estimate from a contractor.

19 Q. Your son's company or any other company?

20 A. Not from a contractor. We got a scope of
21 the work performed by an architect, purely scope,
22 because I could see things were different. You
23 could see it. First off, it was like looking at it.

24 We had a real problem. And I could see the
25 attitudes were different even with Jim Biggs. And

Page 108

1 -- and then that's when I went and hired an
2 architect to not get into price, just get the scope,
3 what have we got to do.

4 And his scope was -- was there for me to
5 review and WorldClaim estimated the scope and the
6 two were even different. I mean, there's a real
7 problem here on scope. Because when you have
8 moisture on the second floor, in the subfloor of the
9 second floor, and you have to replace the subfloor
10 on the second floor, if you've got to remove that
11 before you put a laminated piece of plywood
12 underneath the next floor, you're looking into a lot
13 more cost. If you have to replace all the decking
14 on the -- on the roof, you're looking at substantial
15 more cost than -- than just refelting it and putting
16 on shingles.

17 So the scope that I got from all these
18 so-called experts, WorldClaim, the architect,
19 Lewis O'Leary, they even differ to the scope. And
20 the ones that obviously that say, "You need to
21 replace that subfloor on the second floor, the
22 decking on the top, and here are so many trusses,"
23 those claims are way, way up there, higher for
24 damage than those who didn't -- who eliminated.

25 Q. Sir, we -- we looked at the declaration

Page 109

1 from your brother in the lawsuit you filed against
2 LNR Partners previously. Immediately after the
3 storm, Nationwide paid almost -- over a million
4 dollars for the damage to these properties. None of
5 that money ended up in the pockets of the plaintiffs
6 immediately following the storm, right?

7 A. It looks to me that what we've witnessed
8 today it went to LNR, except loss of rents. The
9 loss of rents I don't think went to LNR, but my
10 brother can testify to that. I believe that
11 continued to flow into the partnership because I
12 have financial statement here.

13 Q. We also saw in the declaration that the
14 company stopped paying mortgage on these properties,
15 right?

16 A. At some point, absolutely.

17 Q. He actually testified as of the
18 September 2005 payment, which would have been the
19 first payment after the property?

20 A. Right.

21 Q. The rent payment is what's used to pay the
22 mortgage, right?

23 A. The rents -- you mean the rents --

24 Q. The rent paying the tenants -- from the
25 tenants was used to pay the mortgage?

28 (Pages 106 to 109)

Ralph Brockman 1/19/2010

Page 110

1 A. Yes, yes.
 2 Q. Generally, more than enough to pay the
 3 mortgage, right?
 4 A. That's correct. But in this case, you
 5 don't have the tenants paying. You have Nationwide
 6 paying the loss of rent. So they equal one another.
 7 The Nationwide loss of rent equals what a hundred
 8 tenants were paying.
 9 Q. And so it's your testimony that you
 10 believe, but you're not certain that the loss of
 11 rent payments from Nationwide paid, plaintiffs were
 12 using to pay their mortgage?
 13 A. Well, I thought we were. But it sounds
 14 like Bill stopped paying the mortgage, probably
 15 under my direction in September. So those loss of
 16 rent payments were used to salvage the debris,
 17 remove it, keep a staff there. We still had a
 18 minimal staff we had to keep there. A fund travel,
 19 fund expenses, fund negotiations with WorldClaim,
 20 and all the other public adjusters that were making
 21 a pitch to us. We used, I think, the loss of
 22 rents -- Bill will verify this tomorrow -- to
 23 continue to fund the operations without paying that
 24 on the mortgage. Now, he may say differently, but,
 25 Q. Plaintiffs incurred expenses to continue

Page 111

1 to maintain operations immediately after hurricane
 2 Katrina; is that fair?
 3 A. Yes. I mean, you had some units still
 4 inhabited on one complex. You had enormous amount
 5 of tenant mess. I mean, tenants run off and leave
 6 food in their refrigerators in their evacuation and
 7 it is horrible. I mean, the odors, everything. You
 8 try to get that -- you use your own workforce to
 9 remove as much debris and get the dumpster as you
 10 can. We tried to do that. It takes funds and we
 11 kept I think the --
 12 Q. Beyond the loss of rents amounts that
 13 Nationwide paid, did plaintiffs ever ask Nationwide
 14 to pay for any of these additional expenses incurred
 15 in cleanup and maintaining operations, putting aside
 16 repairing property damage?
 17 A. We were trying to get Nationwide to pay
 18 the claim, and they paid what they said they owed.
 19 Q. My question was a little different. Did
 20 plaintiffs ever go back to Nationwide and say,
 21 "You're paying the amount of rents we've lost, but
 22 we've incurred these additional expenses. Here's a
 23 calculation or here's a receipt. Can we have a
 24 payment of that amount?" Did plaintiffs ever do
 25 that?

Page 112

1 A. I don't know if Sunquest, per se, asked
 2 for more money. I know WorldClaim asked and asked
 3 and asked and asked.
 4 Q. Well, we've seen -- you've seen
 5 WorldClaim's estimates before, right, sir?
 6 A. Yes.
 7 Q. They're for property damage, right?
 8 A. I'm not sure it's -- yes, yes. It's
 9 property damage. I'm not sure if that estimate
 10 includes flood or not, though.
 11 Q. Mr. O'Leary actually wrote you an E-mail
 12 after reviewing the estimate saying that they're
 13 cookie cutter and what can't be relied upon, right?
 14 A. That was his opinion.
 15 Q. Did you ever tell him he was wrong?
 16 A. No. I didn't tell him he was wrong. That
 17 was his opinion. But that WorldClaim did not
 18 include the removal of this decking on roof that was
 19 damaged, nor any of the subfloor. So you can -- you
 20 can actually reconcile Lewis O'Leary's estimate to
 21 WorldClaim if they equal one another in scope.
 22 Q. And we'll -- we can cover that, but let's
 23 stick to my questions. My question is, WorldClaim
 24 did an estimate -- did not provide an estimate to
 25 Nationwide of additional expenses that plaintiffs

Page 113

1 had incurred in maintaining operations, right?
 2 A. I don't know what WorldClaim asked for.
 3 Only thing they told me is they cannot get a line of
 4 communication with Nationwide. In fact, the last
 5 time --
 6 Q. You're not aware of any -- you're not
 7 aware of any communication that plaintiffs submitted
 8 to Nationwide saying, "Beyond loss of rents, we've
 9 incurred x amount of extra expenses. Please submit
 10 payment to us for that expenses"?
 11 A. I don't know what WorldClaim submitted.
 12 Q. Other than what WorldClaim might or might
 13 not have submitted, plaintiffs did not submit any
 14 communication along with Nationwide, correct?
 15 A. I know I didn't submit any, but -- and you
 16 can -- you can ask my brother tomorrow.
 17 Q. I'll ask Mr. Bill Brockman on behalf of
 18 Sunquest. But so your testimony is Compass Pointe
 19 never asked Nationwide to pay for additional
 20 expenses necessary to maintain its operations beyond
 21 a loss of rents which Nationwide did pay for, right?
 22 A. You say Compass Pointe never asked
 23 Nationwide for additional expenses and/or costs?
 24 You talking about just the expenses to remove debris
 25 or you talking about the claim itself to the

29 (Pages 110 to 113)

Ralph Brockman 1/19/2010

Page 114

1 buildings?
 2 Q. Not for property damage. Additional
 3 expenses to maintain operations beyond loss of
 4 rents?
 5 A. No, no, we didn't.
 6 MR. GILMORE: You want to break for lunch
 7 now?
 8 VIDEOGRAPHER: Off the record at 11:57.
 9 (Off the record.)
 10 VIDEOGRAPHER: On the record at 12:58.
 11 Q. (By Mr. Gilmore) Good afternoon,
 12 Mr. Brockman.
 13 A. Good afternoon.
 14 Q. At the break, you had mentioned you found
 15 out from one of your attorneys who Brett Furr is?
 16 A. Yes, sir.
 17 Q. He is an attorney for one of the banks
 18 that held the mortgage; is that right?
 19 A. Yes, sir. As opposed to LNR, who was the
 20 servicer of the mortgage. And he provided the
 21 appraisal just -- which was very nice and
 22 accommodating --
 23 Q. Okay.
 24 A. -- that helped us sell the properties for
 25 the value we got.

Page 115

1 Q. Let's go back to right after hurricane --
 2 I'm sorry. Let's go back to right before hurricane
 3 Katrina. Did plaintiffs take any measures to
 4 protect the property from the storm before it
 5 arrived?
 6 A. I'm not -- I'm not certain. I'm really
 7 not. You'll have to ask Brother and Donna Bass. I
 8 don't think they could have done anything other than
 9 try to board some windows. And but -- and it was
 10 class three when it hit, which this thing was highly
 11 unusual that a class three would do ten times more
 12 damage than a class five would do.
 13 Q. You had mentioned after the storm that Jim
 14 Biggs had arrived with a team of adjusters from
 15 Nationwide to inspect the property -- property
 16 damage at Compass Pointe?
 17 A. It wasn't adjusters. It was a bunch of
 18 kids. They couldn't hold a tape, couldn't climb up
 19 on ladders. And I think Biggs was directing them on
 20 what to do. I don't think they were adjusters. I
 21 thought Biggs was, though.
 22 Q. And in terms of the -- well, these people
 23 were inspecting damage, taking photographs, taking
 24 measurements at Mr. Biggs' direction?
 25 A. Yes, sir.

Page 116

1 Q. There's another gentleman, do you remember
 2 a Nick Hatfield? Do you remember his name?
 3 A. No, sir, I don't recall.
 4 Q. He was a younger guy with -- also with
 5 Nationwide experienced?
 6 A. I think they divided into teams and he was
 7 probably one of the team leaders.
 8 Q. In terms of the people you spoke with who
 9 are Nationwide employees working on the adjustment
 10 of the claim, other than Mr. Biggs, do you remember
 11 having conversations with anyone else?
 12 A. No, sir.
 13 Q. And you walked -- personally, you walked
 14 the property with Mr. Biggs after hurricane Katrina?
 15 A. Not with Mr. Biggs, no. I walked it on my
 16 own. He was directing these various teams he had
 17 and he was on site. But no, I did not walk the
 18 buildings with him.
 19 Q. Did any other employee or plaintiffs or
 20 someone acting on plaintiffs' behalf accompany
 21 Mr. Biggs and Nationwide teams as they inspected the
 22 property?
 23 A. Not to my knowledge. This was ongoing for
 24 days.
 25 Q. Do you recall giving any kind of recorded

Page 117

1 interview or statement to anyone at Nationwide?
 2 A. No, sir.
 3 Q. Do you recall whether any other employees
 4 of plaintiffs or representatives of plaintiffs gave
 5 any kind of interview or statement that was
 6 recorded?
 7 A. Not to my knowledge.
 8 Q. There were tenants who rode out the storm
 9 at Compass Pointe Apartments, correct?
 10 A. I believe so. Not a lot of them, but
 11 there were some.
 12 Q. Have you spoken with any of them?
 13 A. No.
 14 Q. Do you know if any plaintiffs, employees,
 15 or representative have talked with any of the
 16 tenants who rode out the storm during hurricane
 17 Katrina?
 18 A. Perhaps Donna Bass, the resident manager,
 19 talked with some. And she is more qualified to tell
 20 you how many tried that tried to ride the storm or
 21 rode the storm out.
 22 Q. Other than tenants and Donna Bass, are you
 23 aware of any other individuals at the property who
 24 rode out the storm that would have firsthand
 25 knowledge about the storm?

30 (Pages 114 to 117)

Ralph Brockman 1/19/2010

Page 118

1 A. I do not know. There may have been a
2 maintenance man, and Donna Bass would be aware of
3 who that would be.

4 (Exhibit 314 - 9/23/2005 Letter marked for
5 identification.)

6 Q. Let me hand you what's been marked as
7 Defense Exhibit 314. This is a document plaintiffs
8 produced to us. It doesn't have a Bates number. It
9 is a September 23rd, 2005 letter from Nationwide to
10 Sunquest. And is that -- do you recognize the
11 handwriting on the top corner of that document?

12 A. Yes.

13 Q. Whose handwriting is that?

14 A. Oh, no. I -- I don't know who it is.

15 Q. It's someone -- an employee that works at
16 Brockman Enterprises?

17 A. I think it's Sunquest because it's
18 addressed to Sunquest and their box number. And it
19 does say, "Copy, Ralph, Bill, Lisa, and Jay Landry."
20 And I think that's an employee of my brothers at
21 Sunquest who wrote this. But certainly, I was
22 copied and I recognize it now.

23 Q. Now, this is a letter from Jim Biggs,
24 right?

25 A. That's correct.

Page 119

1 Q. Do you recall seeing this document?

2 A. Yes, sir.

3 Q. At the time of or immediately after
4 hurricane Katrina?

5 A. Well, that's probably this thing that says
6 it was received October 6, I believe.

7 Q. It's difficult to see from that time
8 stamp, but I would agree October 5th.

9 A. Or 5th. It was dated September 23rd. Our
10 offices like to stamp when we receive stuff. And I
11 certainly probably forwarded this over to me
12 immediately upon receipt. So it would be within the
13 first week of October when I saw this. And he
14 stated it was sent by Jim Biggs, claims department.

15 Q. The letter to Sunquest Properties writes,
16 "In response to your claim, Nationwide Property and
17 Casualty Insurance Company (Nationwide) has
18 performed an investigation and inspected the damages
19 to your property. Based on this investigation and
20 the information available to Nationwide, a portion
21 of your claim has been determined to be from a
22 covered peril. And portions have been determined to
23 be from water or waterborne material as defined in
24 your policy." Did I read that correctly?

25 A. Yes, sir.

Page 120

1 Q. It's fair to say in that statement that I
2 just read Nationwide was notifying plaintiffs that a
3 portion of their claim was covered and was going to
4 be paid off and a portion was not covered, right?

5 A. Correct.

6 Q. It goes on to cite exclusion language from
7 floodwater damage that's present in policy. I think
8 you testified -- you testified earlier that you
9 understand and are not claiming that Nationwide's
10 policy covers for flood damage, right?

11 A. That's correct. What bothered me when I
12 got this, under B, "Exclusions," Item 1, it has a
13 little "g," it says "water." Now, I mean, flood
14 damage, I know that we're not covered and it's
15 exclusion. But water, I thought if it was wind
16 driven, it would be included. But he's saying here,
17 if I understand it correctly, that even water is an
18 exclusion, rain or wind-driven water. I assume. I
19 don't know. But that -- I knew we had a problem
20 right when I read this. It was pretty obvious.

21 Q. Sir, you understand today that some of the
22 money that Nationwide has paid was for damage to --
23 for both wind and wind-driven rain, right?

24 A. Yes. I don't know if you're going to say
25 -- if they may say it's wind what they paid for, but

Page 121

1 not water, not wind-driven rain. I -- I don't know.
2 At this time, I just don't know where they're coming
3 from. I know the amount are way --

4 Q. If you read the exclusion under water,
5 take the time to read those "1", "2", "3", "4" --

6 A. Is little "g" under "1" or is little "g"
7 before the "1" in parenthesis?

8 Q. You'll see this letter, the "1", "2", "3",
9 "4", and then "A", "B", "C" under parenthesis, read
10 those and tell me if any of those reference "wind"
11 or "rain" in them.

12 A. You want me to start reading on the
13 parenthesis "1"?

14 Q. Right. If you look through the -- said,
15 "Water Exclusions" that they're citing for your
16 policy.

17 A. Okay. It says, "Flood, surface water,
18 waves, tides, tidal waves, overflow, or any body of
19 water" --

20 Q. It's a long question. Let me rephrase.
21 If you take opportunity to look through this, I
22 think you'll see, and tell me if you agree, they
23 don't -- these exclusions don't reference "rain" or
24 "wind-driven rain"?

25 A. Yes, it does under little "1". It says,

31 (Pages 118 to 121)

Ralph Brockman 1/19/2010

<p style="text-align: right;">Page 122</p> <p>1 "All whether driven by wind or not." 2 Q. Well, number "1" says, "Flood, surface 3 water, waves, tides, tidal waves, overflow, or any 4 body of water or their spray, all whether driven by 5 wind or not." Did I read that correctly? 6 A. "All whether," yes, yes, you did. 7 Q. Okay. You would agree rain is not flood, 8 surface water, waves, tidal waves, overflow, or any 9 body of water, correct? 10 A. Yes. But whether driven water is excluded 11 by this. 12 Q. Well, you're sounding confused about this 13 letter. When you received this letter, did you ask 14 Nationwide, "Are you paying for repairs or damage 15 caused by wind-driven rain?" 16 A. No, I didn't. 17 Q. Did anyone from Nationwide ever tell you, 18 "We're not paying for damage caused by wind-driven 19 rain?" 20 A. This to me says it in writing that they're 21 not. It was water driven by wind or not is not 22 covered. Unless I'm -- am not reading it right, 23 that's what it says. So I think it's very clear 24 what their position is on -- on water driven by 25 wind, which I disagreed with. You're right in that</p>	<p style="text-align: right;">Page 124</p> <p>1 damage caused by wind-driven rain at these 2 properties? 3 A. I haven't said that. I'm just reading 4 this. This letter says they're not. It's an 5 exclusion. Maybe Nationwide overruled Mr. Biggs and 6 said, "Yes, we are." I don't know. But I don't 7 have any proof that they say they're paying for 8 wind-driven rain. 9 Q. When you're saying that this exclusion 10 that's cited in this letter would seem to include 11 wind-driven rain, the number "1" in parenthesis 12 reads, "Flood, surface water, waves, tides, tidal 13 waves, overflow, or any body of water or their 14 spray, all whether driven by wind or not." I read 15 that correctly, right? 16 A. Absolutely. "All whether driven by wind 17 or not," meaning that driven by wind it's excluded 18 or not driven by wind it's excluded. 19 Q. If it is water damage caused by one of 20 these types of water, you would agree that 21 wind-driven rain is not flood, right? And it's not 22 surface water. It's not waves. It's not tides. 23 It's not tidal waves. It's not overflow of a body 24 of water or spray from a body of water or waves? 25 A. Correct.</p>
<p style="text-align: right;">Page 123</p> <p>1 it doesn't say "rain." Of course, that's not 2 excluded. You know, rain isn't excluded. But rain 3 driven by wind is excluded by how I read this 4 letter. 5 Q. Did you ask anyone else at Sunquest 6 Properties whether they shared your understanding of 7 what Nationwide was saying in this letter? 8 A. I don't recall. 9 Q. But you understand sitting here today that 10 Nationwide issued payments and -- for damage caused 11 by wind-driven rain to plaintiffs' property, right? 12 A. I'm not sure what they said on their 13 check. You know, I'm not sure. I know they're 14 paying for the windstorm portion of the damage. I 15 know they're paying for rain that comes through a 16 hole in the roof. But I'm not certain by what I'm 17 reading here that what they're paying was ever 18 included wind-driven rain. Maybe that's our 19 difference. Maybe that's why there's so much 20 disparity in the difference. Jim Biggs can answer 21 what it meant here. I can't. 22 Q. Putting aside what other witnesses have 23 testified to or not, I'm trying to understand what 24 plaintiffs' contentions are. And are plaintiffs 25 contending that Nationwide has not paid them any</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Is that fair, sir? 2 A. Yes. 3 (Exhibit 316 - 11/15/2005 Letter marked 4 for identification.) 5 Q. I'm going to hand you what's been marked 6 as Defense Exhibit 316. And this is another letter 7 that was produced by plaintiffs and not Bates 8 numbered. It is a November 15th, 2005 letter from 9 Jim Biggs at Nationwide to you and your brother, 10 Bill Brockman, correct, sir? 11 A. Yes, sir. 12 Q. It has a Bates stamp at the bottom -- I'm 13 sorry -- a date stamp at the bottom that says 14 received appears November 21st, 2005. It's 15 difficult to read, isn't it? 16 A. It's difficult, but it's close. It was 17 dated November 15th, so that's probably the 21st or 18 23rd, something like, yes, sir. 19 Q. Sitting here as the corporate 20 representative for plaintiffs, did Compass Pointe 21 receive this letter from Nationwide? Have you seen 22 this document before today? 23 A. I believe so, yes, sir. 24 Q. And a letter from Mr. Biggs reads, "This 25 letter is sent per our last conversation in</p>

32 (Pages 122 to 125)

Ralph Brockman 1/19/2010

Page 126

1 reference to the loss of rent on Compass Pointe
 2 property, at which time I expressed my desire to
 3 expedite repairs, as well as the balance of the loss
 4 of the rent." Did I read that correctly?
 5 A. Yes.
 6 Q. Do you recall conversation prior to this
 7 November 15th letter with Mr. Biggs regarding loss
 8 of rent at Compass Pointe property?
 9 A. I don't recall the conversation, but he --
 10 he addressed the letter to Bill and I, and
 11 conversation could have been with Bill.
 12 Q. Do you have any basis to doubt that
 13 Mr. Biggs had a --
 14 A. No.
 15 Q. -- conversation with you or your brother
 16 regarding his desire to expedite repairs and pay
 17 loss of rent?
 18 A. No cause for doubt.
 19 Q. Now, you'll see the next sentence reads,
 20 "See attached spreadsheet which details the units
 21 that have been determined unlivable from your
 22 hurricane loss of 8/29/05. You will also note that
 23 per my review, I have projected a completion of
 24 these covered damages through February 2006. This
 25 period covers six months from the date of the loss,

Page 127

1 which should be adequate to expedite the repairs of
 2 covered damages." Did I read all of that correctly?
 3 A. Yes, sir.
 4 Q. Then the next sentence reads, "This
 5 projection takes in consideration that the scope and
 6 payment for exterior covered damages were completed
 7 and payment made 9/29/05, along with scope and
 8 payment for interior covered damages made on
 9 10/20/05. It is my intent to make this final
 10 payment of \$86,622 on the loss of rent by 12/2/05
 11 unless you have documentation that would change the
 12 progression of the loss." Did I read all of that
 13 correctly?
 14 A. Yes, you did.
 15 Q. Let's take that apart. First, he's saying
 16 that Nationwide issued --
 17 (Telephone rings.)
 18 A. Sorry.
 19 Q. First, Mr. Biggs says in this letter that
 20 Nationwide issued payments for exterior damage
 21 September 29th, correct?
 22 A. Yes.
 23 Q. And, in fact, Compass Pointe and Sunquest
 24 received payments from Nationwide on September 29th
 25 for exterior damage, right?

Page 128

1 A. Yes.
 2 Q. Then there was additional payments for
 3 Nationwide -- I'm sorry. Payments on 9/29/05, that
 4 would have been exactly one month after hurricane
 5 Katrina occurred, right?
 6 A. Yes.
 7 Q. Hurricane Katrina occurred August 29th,
 8 right?
 9 A. Right.
 10 Q. Scope and payment for interior covered
 11 damage paid on October 20th, 2005 were received by
 12 Compass Pointe, right?
 13 A. Yes.
 14 Q. Then subsequently Mr. Biggs had
 15 discussions with plaintiffs regarding their loss of
 16 rent claim; is that right?
 17 A. I believe so, yes, sir.
 18 Q. And those discussions are reflected in
 19 this letter and the spreadsheet that's attached,
 20 right?
 21 A. Yes.
 22 Q. Now, let's turn to the spreadsheet, which
 23 you see is an Excel spreadsheet entitled "Loss of
 24 Income." And have you seen this document before?
 25 A. I don't recall going over the spreadsheet.

Page 129

1 I just recall the -- the letter.
 2 Q. Do you know whether Mr. Biggs prepared
 3 this spreadsheet or whether plaintiffs'
 4 representatives provided this spreadsheet to
 5 Mr. Biggs?
 6 A. I don't know. I do know, though, that he
 7 says it's his intent to make final payment by 12/2.
 8 And he's projected damages through '06, covering six
 9 months. I believe it took longer than six months,
 10 and I do believe that there was a subsequent
 11 addition to loss of rents collected, maybe for that
 12 reason. I mean, all he can do is project. It took
 13 more than six months.
 14 Q. We'll look at that in a second. I just
 15 want to show it. The last page of this document,
 16 Defense Exhibit 316, there are totals that project
 17 six months of loss rent at \$14,437 per month, right?
 18 A. Yes.
 19 Q. That would have been based on information
 20 from plaintiffs, right?
 21 A. Yes. Rent roll from plaintiffs and they
 22 total 86,622, the amount he says he would pay.
 23 (Exhibit 185 - 12/4/2005 Letter marked for
 24 identification.)
 25 Q. I'm going to hand you Defense Exhibit 185.

33 (Pages 126 to 129)

Ralph Brockman 1/19/2010

Page 130

1 which is a December 4th, 2005 letter from you to
2 your brother, Bill Brockman, from Jim Biggs. It's
3 Bates number NW1-SUN1355. Have you seen this
4 document before?

5 A. I don't recall it, but yes, I believe I
6 have.

7 Q. You'll see --

8 A. Yes, I've seen this.

9 Q. You'll see this letter follows up the
10 correspondence on 11/15/05?

11 A. Correct.

12 Q. And he attaches the payment of 86,622 on
13 the rent loss cash out?

14 A. Yes, sir.

15 Q. And Compass Pointe received a rent loss
16 payment from Nationwide of 86,622, right?

17 A. Yes, sir.

18 MR. GILMORE: GO off the record to change
19 tape.

20 VIDEOGRAPHER: Off record at 1:20. End of
21 tape three.

22 (Off the record.)

23 VIDEOGRAPHER: Beginning tape four. On
24 the record at 1:20.

25 (Exhibit 198 - Document re: Upward

Page 132

1 believe.

2 Q. That's all right. His letter we looked at
3 a moment ago from December 4th.

4 A. Right.

5 Q. Did plaintiffs provide Nationwide with the
6 additional information that led to this upward
7 revision?

8 A. I don't know.

9 Q. Did plaintiffs ever tell Nationwide that
10 six months of rent was insufficient to cover the
11 lost rent that the property had incurred prior to
12 commencing this litigation, I guess, with
13 Nationwide?

14 A. I don't know. This would be something
15 that I prepare my brother for to answer tomorrow.

16 Q. Sir, I've noticed that you've gotten a
17 handwritten list of various topics. You're taking
18 notes during this deposition. Are these -- can you
19 tell me what you're writing down?

20 A. Well, right now, I just wrote "six-month
21 rent loss on Compass Pointe and revision from 86
22 plus to 91,944." Was there another revision?

23 Q. And I don't have a problem with you
24 writing notes to yourself. What I would like to
25 ask, though, is that at the conclusion -- as we get

Page 131

1 Revision marked for identification.)

2 Q. Let me hand you what's been marked as
3 Defense Exhibit 198. And this is a document Bates
4 numbered NW1-SUN-1384 through 1389. Have you seen
5 this document before, sir?

6 A. I'm not sure. There's no letter
7 accompanying it. This is just -- looks like a
8 revised loss of rent schedule that pays 15,324
9 rather than the 14,000.

10 Q. Previously, you testified you recall there
11 was an upward revision?

12 A. Yes, and this must be it.

13 Q. Does this document reflect that upward
14 revision. And that was based on additional
15 information from plaintiffs given to Nationwide; is
16 that correct, sir?

17 A. Or maybe in discovery. I was going to see
18 what month he went through over here. He went
19 through February on this one, the first one. And he
20 went through February here. He's adjusted it from
21 14,437 a month to 15,324. It's about 5,000 more,
22 plus or minus, yes, sir.

23 Q. You'll see then at the top there's a
24 notation that says, "Revised 12/13/05"?

25 A. Yes, sir. That's after his letter. I

Page 133

1 to the end of this deposition that we just mark the
2 notes that you have handwritten down as an exhibit
3 and attach that to the deposition transcript.

4 A. That's all right with me, as long as I can
5 take a copy to my brother.

6 Q. You'll get your original back. We'll just
7 make a photocopy of everything you've written down.

8 (Exhibit 157 - Damages Paid marked for
9 identification.)

10 Q. I'm going to hand you what's been marked
11 as 157. And this is a document produced by
12 plaintiffs, not Bates numbered. Have you seen this
13 document before?

14 A. I believe so, yes, sir.

15 Q. Can you tell me what it is?

16 A. It looks like the damages that Nationwide
17 paid or we received on both Carriage House and
18 Compass Pointe. It's broken down on Carriage House
19 interior, exterior, recoverable, depreciation, and
20 loss of rents. And the same way on Compass Pointe.

21 Q. And let's -- since we're working on the
22 Compass Pointe case in this deposition, let's take a
23 look at those numbers. For Compass Pointe, it lists
24 payments for interior damage of \$230,263.94?

25 A. Yes, sir.

34 (Pages 130 to 133)

Ralph Brockman 1/19/2010

Page 134

1 Q. Do you know how that figure was calculated
2 by plaintiffs?

3 A. I think this is provided by Nationwide to
4 us. And I just asked my office manager what did we
5 receive on both these properties. And this is
6 her -- this is her summation.

7 Q. Your office manager, meaning Susan Belk?

8 A. Yes.

9 Q. So Susan Belk --

10 A. I think these are her computation of what
11 we received.

12 Q. She tallied up all the checks that
13 Nationwide issued to plaintiffs?

14 A. Yeah. I wish it was dated because we
15 supplemented when all this discovery started in '09
16 two more payments from Nationwide in '09. So this
17 is not dated. This would precede those payments.

18 Q. So prior to -- during Nationwide's
19 adjustment on the claim prior to litigation, this
20 reflects the payments that plaintiffs have recorded
21 from Nationwide for Compass Pointe property?

22 A. Yes, sir, I believe so.

23 Q. Okay. So it just says interior -- before
24 we get into it, just go through the numbers. Do you
25 know what Ms. Belk did to prepare this document?

Page 135

1 A. No, sir, but I'm sure she got the checks
2 and the breakdown that Nationwide sent her. And she
3 just made a compilation of both of them on this one
4 sheet for me.

5 Q. The interior figure is \$230,263.94, right?

6 A. Yes, sir.

7 Q. The entry for exterior damage is
8 \$109,875.65?

9 A. Yes, sir.

10 Q. Recoverable depreciation payment is listed
11 as \$43,019.74, correct?

12 A. Yes, sir.

13 Q. That leads to a total of property damage
14 payments by Nationwide of Compass Pointe of
15 \$383,159.33?

16 A. Yes, sir.

17 Q. Now, underneath that, there are two
18 entries "Loss of Rents." One is 8,000 -- I'm sorry
19 -- 86,622?

20 A. Yes, sir.

21 Q. We looked at that correspondence on that
22 payment before, right?

23 A. Right.

24 Q. The next one is "Loss of Rents," \$5,322,
25 correct?

Page 136

1 A. Yes, sir.

2 Q. That's a total of 91,944, correct?

3 A. Yes, sir.

4 Q. Do you know how many months of Compass
5 Pointe mortgage payment those total loss of rents
6 would have been able to cover at the time of
7 following hurricane Katrina?

8 A. I would imagine six months. This -- it's
9 not -- you don't -- we make -- this property was
10 making around 17, 18,000 a month after expenses.
11 And so, you know, if you have six months of loss of
12 rents, it would probably have been able to pay
13 six-month mortgage payment, I think, eventually.

14 Q. Then the total sum at the bottom, total
15 received for Compass Pointe, \$475,103.33?

16 A. Yes, sir.

17 Q. Sitting here today, putting aside the
18 payments post litigation, you don't have any reason
19 to doubt the accuracy of this figure, right?

20 A. No, sir.

21 (Exhibit 139 - 12/8/2006 Warranty Deed
22 marked for identification.)

23 Q. I'm going to hand you what's been marked
24 as Defense Exhibit 139. Do you recognize this
25 document, sir?

Page 137

1 A. I'm trying to. I don't understand it
2 because it says \$10. It's conveying Compass Pointe
3 to Platinum Investments, LLC. And I know we sold it
4 for more money than \$10. I think it was 2,700,000.

5 Q. I think you're right based on other
6 records.

7 A. Yeah. So there's some reason for this,
8 and I don't know what it is.

9 Q. Well, I'll represent to you that warranty
10 deeds often have a nominal sum when they're
11 reflecting a transfer.

12 A. Okay.

13 Q. But I wanted to ask you is this -- do you
14 recognize this as the warranty deed that actually
15 transferred ownership of the property from Compass
16 Pointe's -- Compass Pointe Partnership to Platinum
17 Investments, LLC?

18 A. I believe so, yes, sir.

19 Q. It's dated December 8th, 2006, signed by
20 your brother, William Brockman. You see that at the
21 bottom?

22 A. Yes, sir.

23 Q. Was December 8th, 2006 the day of the
24 transfer of ownership from Compass Pointe
25 Partnership to Platinum Investments occurred?

35 (Pages 134 to 137)

Ralph Brockman 1/19/2010

Page 138

1 A. To the best of my knowledge, yes, sir.
 2 But again, my brother signed it, so I think he's
 3 more qualified to answer than me.
 4 Q. Who is -- who are the owners of Platinum
 5 Investments, LLC?
 6 A. Well, I didn't know exactly. I knew that
 7 David Pilger and Greg Stewart were two of them, or
 8 at least I thought they were. I don't know how many
 9 others there were.
 10 Q. Sitting here today, plaintiffs are only
 11 aware of those two individuals as owners?
 12 A. That's correct.
 13 Q. Let me hand you --
 14 A. But I think there were others, though, I
 15 mean.
 16 (Exhibit 141 - Corrected Warranty Deed
 17 marked for identification.)
 18 Q. Let me hand you what's been marked as 141.
 19 Again, this is produced in discovery. It's entitled
 20 "Corrected Warranty Deed." Have you seen this
 21 document before, sir?
 22 A. Yes, sir.
 23 Q. You see it's -- at second page, it's
 24 signed by your brother, William Brockman, dated
 25 April 16th, 2007, correct?

Page 139

1 A. Yes, sir.
 2 Q. You see middle of page, there is a bold
 3 and underlined statement that reads, "This corrected
 4 warranty deed is being rerecorded to add the
 5 paragraph reserving the grantor's right, title, and
 6 interest in all insurance claim pertaining to
 7 hurricane Katrina." Did I read that correctly?
 8 A. Yes, sir.
 9 Q. Do you recall why that change was made in
 10 this document, the corrected warranty deed, versus
 11 the original deed?
 12 A. Well, I recall in the agreement that we
 13 reserve the rights, but it was an oversight in
 14 preparation of warranty deed to include. And I
 15 think this -- this corrected that oversight. And I
 16 notice it's dated in April, and I think the first
 17 one you said was in December. So within three or
 18 four months, a new one was prepared that complied
 19 with the spirit of our agreement.
 20 Q. But is it your testimony that the actual
 21 title and property transferred to Platinum
 22 Investments, LLC as of the first warranty deed,
 23 December 8th, 2006; is that correct?
 24 A. I believe if you --
 25 Q. Sure. I'll rephrase it. I'll rephrase

Page 140

1 it. Would the -- the fact that this was rerecorded
 2 with this addition doesn't change the fact that the
 3 property was sold and transferred to Platinum
 4 Investments, LLC on December 8th, 2006, right?
 5 A. I believe that's correct, yes, sir.
 6 Q. I'm not asking you for a legal opinion.
 7 A. Yes.
 8 Q. Just in terms of factual, your
 9 understanding is that the sale finished?
 10 A. It finished. It made mistake on reserving
 11 the rights and they went along with the correcting
 12 it. But the title actually, I believe -- I'm no
 13 lawyer. I think the title was transferred in
 14 December.
 15 (Exhibit 310 - Closing Statement marked
 16 for identification.)
 17 Q. I'm going to hand you what's been marked
 18 as Defense Exhibit 310. Do you recognize this
 19 document, sir?
 20 A. Yes, sir.
 21 Q. Can you tell me what it is?
 22 A. It's a closing statement. It's referred
 23 to as a settlement statement here on the sale of
 24 Compass Pointe to Platinum Investments.
 25 Q. You'll see the settlement date is listed

Page 141

1 as 12/08/06, correct? You see that on the right?
 2 A. Yes, sir, that's correct.
 3 Q. Now, underneath that in the column
 4 entitled "K. Summary of Seller's Transaction," it
 5 has listed on Line 401, "Contract Sales Price,
 6 2,700,000." Did I read that correctly?
 7 A. Yes, sir.
 8 Q. And that was the price that Platinum
 9 Investments paid to Compass Pointe Partnership --
 10 A. Yes, sir.
 11 Q. -- to purchase the property?
 12 A. Yes, sir.
 13 Q. Now, looking further down in Column K in
 14 the right-hand side of that settlement statement,
 15 you'll see it says, "Reductions and Amount Due to
 16 Seller," correct?
 17 A. Yes, sir.
 18 Q. And there's one sum for 175,000 underneath
 19 that, right?
 20 A. Yes, sir.
 21 Q. And that's an earnest money amount that
 22 Platinum Investments had already paid?
 23 A. Yes, sir. It's deposit they put up when
 24 we signed the buy/sell agreement I suppose. Yes,
 25 sir.

36 (Pages 138 to 141)

Ralph Brockman 1/19/2010

Page 142

1 Q. Now, underneath that, there's a line item
2 that says "Existing Loans Taken Subject To," and
3 "Payoff of First Mortgage Loan," and "Payoff of
4 Second Mortgage." You see those three lines?
5 A. Yes, sir.
6 Q. There's no sums next to any of those three
7 lines, are there, sir?
8 A. No.
9 Q. Do you know why the mortgages that Compass
10 Pointe Partnership had that were being serviced by
11 LNR Partnership -- LNR Partners are not reflected in
12 this settlement statement for the sale of the
13 property for Platinum Investments?
14 A. No, I don't.
15 Q. When were the loans -- well, strike. At
16 this point in December 2006 when this settlement
17 statement was being prepared and closing was
18 occurring, had the mortgages on Compass Pointe
19 property already been paid off by the partnership?
20 A. I'm not sure. My brother was the party to
21 this settlement statement, not I. I just don't
22 know. I would have thought they would have been
23 shown here in -- in the settlement statement.
24 Q. You'll see at the bottom when there are
25 some taxes added on to the -- or I guess removed

Page 143

1 from the -- from the total amount, as well as the
2 credit for the deposit, it says, "Cash to Seller
3 \$2,500,352.13." Did I read that correctly?
4 A. Yes. Yes, sir.
5 Q. Do you know how much money Compass Pointe
6 Partnership made from the sale of the property after
7 paying off the mortgages?
8 A. It wouldn't be money made. You mean what
9 the surplus was after they paid the mortgage?
10 Q. That's right.
11 A. I do not recall, but I know there was a
12 surplus, though.
13 (Exhibit 424 - 4/24/2006 Letter marked for
14 identification.)
15 Q. Let me hand you what's been marked as
16 Exhibit 424. And this is a document produced by
17 plaintiffs, bearing Bates number CH 2319. It's a
18 letter on your letterhead?
19 A. Yes, sir.
20 Q. And it's dated April 24, 2006?
21 A. Yes, sir.
22 Q. It says, "Summary For Investors Re:
23 Compass Pointe, Carriage House"?
24 A. Yes, sir.
25 Q. It says, "Dear Investors. We just received

Page 144

1 a payoff on both for mortgage company. We are
2 checking their charges which is a rip-off, but we
3 have no choice. Hopefully, the closing on the
4 Carriage House will be enough to pay off both
5 mortgages, we can stop the penalty." Did I read
6 that correctly?
7 A. Yes, sir.
8 Q. It says, "Payoff Compass Pointe." And
9 then it has an entry of "\$1,842,342"?
10 A. Yes, sir.
11 Q. Do you know where that figure would have
12 come from?
13 A. I'm certain that it's probably what they
14 were saying we owed on the mortgage. This was our
15 records. And you showed that we deposited 2,500,000
16 plus. And you asked while ago how much surplus
17 funds we had. We subtract the escrow here for some
18 reason. I don't know what that was for.
19 Q. The escrow would be amounts that you had
20 paid into the escrow account?
21 A. That's the insurance probably. That took
22 the -- remember, they took the insurance payment and
23 put it in a non-interest-bearing account and that
24 was in escrow for us. So you pay off the mortgage
25 and you credit the escrow that they got from

Page 145

1 Nationwide. It shows here 346. So the balance is
2 1,496,000. And at this time, we received 2.5. This
3 is about 1.5. So we had a surplus of about a
4 million dollars after the payment of Compass, or
5 that's what was planned to be.
6 Q. That was what was planned to be. And
7 then, similar story, it's your understanding for the
8 payoff of Carriage House?
9 A. Carriage House, yes, sir.
10 Q. Would the escrow amount include anything
11 other than insurance proceeds, for instance, taxes
12 or --
13 A. It could be some taxes, but they took the
14 taxes out from -- from us over here on the
15 settlement statement. So yes, escrow could be
16 property tax and it could be insurance premiums.
17 Q. So at the bottom, you were projecting in
18 April 2006, total balance for both on payoff
19 1,496,045 for Compass Pointe, 1,089,293 for Carriage
20 House, for total balance of 2,585,338, right?
21 A. Yes, sir.
22 Q. In April 2006, you're anticipating as
23 sales price of both properties of \$5,353,500?
24 A. That's correct. We put substantial money
25 in these properties when we bought them. And so

37 (Pages 142 to 145)

Ralph Brockman 1/19/2010

Page 146

1 some of this is getting our own capital back. It's
 2 not all profit. But it is certainly surplus that we
 3 got more than what we owed. I don't think this has
 4 the settlement final in -- in LNR in it, though.
 5 Q. Let me hand you Exhibit 425, which is
 6 another letter from you a couple of days later,
 7 produced by plaintiff, bearing Bates number CH 2320.
 8 And it's addressed to Joe Ledoux, Jan Brockman, your
 9 brother, Bill Brockman, and Diane McGowan. I think
 10 you indicated those are shall we call them
 11 principals of the partners in these properties?
 12 A. Yes, sir.
 13 Q. And you write, "Dear Investors, Bad news
 14 as per the attached. Now it appears we'll be
 15 engaged in litigation. Landry advised today that we
 16 raise separate funds to bring each mortgage current
 17 and bring our Mississippi attorney into the loop.
 18 They refused using insurance proceeds to bring the
 19 mortgage current and that is why we need to send
 20 separate funds." Did I read that correctly?
 21 A. Yes, sir.
 22 Q. And "they" is LNR Partners, correct?
 23 A. Yes.
 24 Q. "They" -- when you're referring to "they"?
 25 A. Yes, sir.

Page 147

1 Q. You go on to write, "If they refuse to
 2 accept these funds, it is our opinion that they are
 3 then exposed to punitive damages." Again, we're
 4 talking about LNR Partners in that statement, sir,
 5 right?
 6 A. Yes, sir.
 7 Q. Then at the bottom of that letter, you
 8 write, "Note. To bring both mortgages current, it
 9 will take \$687,031.26. We have 434,504 in Carriage
 10 House and 118,879 in Compass Pointe." Did I read
 11 that correctly?
 12 A. Yes.
 13 Q. Do you know what those two latter sums,
 14 \$434,504 in Carriage House and 118,879 in Compass
 15 Pointe, refer to?
 16 A. That's the cash we have in the accounts I
 17 believe at that time, which I believe a lot of that
 18 was loss of rents. I don't think LNR ever intended
 19 that, but probably -- I know they intended found out
 20 today the big loss of property. I don't think they
 21 would intended the loss of rents. In my -- in my
 22 letter here, I'm telling them what -- what came up
 23 after my letter of April 24th. In two days we find
 24 out now, we got to separate funds to bring mortgage
 25 current. Maybe that's why it wasn't shown on the

Page 148

1 settlement statement. I don't know.
 2 Q. When did plaintiffs first have discussions
 3 with Mr. Stewart and Mr. Pilger about buying
 4 Platinum Investments -- I'm sorry -- about buying
 5 Compass Pointe property?
 6 A. I don't know. I know that they -- they --
 7 we closed it in December. Wasn't it December 8th or
 8 something like that by these documents? I would
 9 imagine it would have preceded that by a month, six
 10 weeks, perhaps even more.
 11 (Exhibit 468 - Buy/Sell Agreement marked
 12 for identification.)
 13 Q. I'm going to hand you what's been marked
 14 as Defense Exhibit 468. Do you recognize this
 15 document, sir? It's Bates number CH 153 to 155.
 16 A. Yes, sir. It's buy/sell agreement
 17 executed by my brother and David Pilger. I'm trying
 18 to see if it's Compass Pointe. It is for Compass
 19 Pointe and it is -- refers to the 175 earnest money
 20 deposit that was shown on the closing statement.
 21 It's not dated by Pilger. It's dated by my brother
 22 to be late June of '06, June 23rd.
 23 Q. And to your knowledge, is this the
 24 agreement to buy and sell the property between
 25 Compass Pointe Partnership and Platinum Investments?

Page 149

1 A. Certainly appears so because of the
 2 deposit. And I'm trying to find the total sales
 3 price.
 4 Q. You see on number two on the first page,
 5 it says, "Purchase Price \$2,700,000"?
 6 A. Yes, that's it. It appears to be document
 7 that was a buy/sell agreement.
 8 (Exhibit 466 - 8/18/2006 Letter marked for
 9 identification.)
 10 Q. I want to hand you another document also
 11 produced by plaintiffs. It's Bates numbered 466.
 12 It's marked 466. It's Bates numbered Carriage House
 13 1522 through 1533. This is a August 18th, 2006
 14 letter from you to Greg Stewart, correct?
 15 A. Yes, sir.
 16 Q. Can you tell us what this document is,
 17 Mr. Brockman?
 18 A. It's purchase payment agreement for
 19 Compass Pointe. And I'm trying to see who executed
 20 this one. This one has me executing it. And dated
 21 August 18th. The other one was dated when, 23rd of
 22 June. So it appears that there was some changes to
 23 the one my brother executed, changes between
 24 June 23rd and August 18th, and -- but they both
 25 referred to the 175 as deposit. I don't -- I don't

38 (Pages 146 to 149)

Ralph Brockman 1/19/2010

<p style="text-align: right;">Page 150</p> <p>1 know if the first one had anything to do about 2 closing. Let me go to it and see. It didn't refer 3 to a closing in the first document my brother 4 signed. This one does. "Provide for closing to 5 occur 45 days after settler finally settles and 6 concludes any and all outstanding property insurance 7 claim with respect to the property." 8 Q. And that's one difference between the 9 August and June agreements, right? 10 A. Yes. Yes, there is. 11 Q. Now, if you look at -- looking at 466, the 12 August agreement that you sent to Greg Stewart, if 13 you look at Bates number CH 1525, which is Page 4 of 14 the purchase and sell agreement, provision Paragraph 15 8, entitled "Lease of Property," correct? 16 A. Yes. 17 Q. It says, "From and after the date of this 18 agreement, through and including the date of closing 19 or other earlier termination of this agreement, 20 seller does hereby lease and let exclusively unto 21 buyer, and buyer does hereby rent from seller the 22 property, said lease to be on the terms and 23 conditions herein set forth. Beginning 24 September 1st, 2006, continuing thereafter on the 25 first day of each calendar month, through and</p>	<p style="text-align: right;">Page 152</p> <p>1 that's executed in the second one was the final 2 agreement in August of '06 and until the closing. 3 They're spending their money in rehab. And -- and 4 then before they get their loan approved, and 5 they're leasing it for basically the same rents that 6 we had in the loss of rents, you know, 7 approximately, per month, almost 15,000 a month for 8 that short period of time, which would be September, 9 October, November, portion of December. 10 Q. I have a couple of questions about this. 11 First, how did the parties agree on this 14,729.17 12 figure? 13 A. Apparently, that's pretty close to what 14 rents were we were receiving from tenants. If you 15 remember earlier, we got an increase from 14 -- 16 about 14,7 to 15 something. So at the time, this 17 was probably the same thing we were providing the 18 insurance company. The 14,729 was the loss of rent 19 from the tenants. 20 Q. At this point in August 2006, were there 21 still tenants at the property paying rents to 22 Sunquest and Compass Pointe? 23 A. No, I don't believe so, no, no. I think 24 everybody vacated so he could do his -- his rehab. 25 Q. When -- at what point did the buyers begin</p>
<p style="text-align: right;">Page 151</p> <p>1 including the date of closing or other earlier 2 termination of this agreement, buyer shall pay a 3 monthly rental of \$14,729.17 per month as a monthly 4 rental amount for buyer's use and occupancy of the 5 property." Did I read that correctly? 6 A. Yes, sir. 7 Q. This provision provides that the buyer, 8 Platinum Investments, was leasing the property from 9 the date of this -- September 1st, 2006, rather, 10 until the date of closing; is that correct? 11 A. Yes, sir. 12 Q. This is in addition to the earlier 13 June 2006 sales agreement, right? 14 A. Yes, sir. 15 Q. Do you know why this addition was made? 16 A. I don't know whether it was maybe having 17 to do with their financing. I just don't recall 18 exactly. 19 Q. Prior to this -- the execution of the 20 June 2006 -- 21 A. When was the closing, the settlement 22 statement closing? Wasn't it December of '06? 23 Q. That's right. 24 A. Yeah. I think they're trying to get their 25 financing together. And we have buy/sell agreement</p>	<p style="text-align: right;">Page 153</p> <p>1 their rehab? Was it prior to August 18th, 2006? 2 A. No, sir. I would imagine it began right 3 after this August statement. Before the closing. 4 And it didn't bother me. They're putting a lot of 5 money in that property and improving it every day. 6 So we have a property that's getting worth more and 7 more. And we're collecting almost 15,000 a month 8 while he's doing it. But I was accommodating them 9 because they're helping our values, but he 10 apparently didn't have his ducks in a row and 11 investors and loans. So this -- this provision was 12 added really to accommodate both of us. 13 Q. So, sir, it's fair to say that the closing 14 that occurred February 2006 fell through, they would 15 have been paying about approximately 15,000 a month 16 in rents between August and December, right? 17 A. Yes, sir. 18 Q. And during that period, they were 19 renovating at their own expense the property, 20 correct? 21 A. That's my recollection, yes, sir. 22 Q. Had for some reason they'd not been able 23 to secure financing and the closing had fallen 24 through, you would have received this substantially 25 more valuable property?</p>

39 (Pages 150 to 153)

Ralph Brockman 1/19/2010

Page 154

1 A. That's how I saw it.
 2 Q. So this was a pretty good deal for you?
 3 A. I thought it was a good deal for our
 4 investors. That's why we did it.
 5 Q. How much did the buyers, Platinum
 6 Investments, spend to renovate the Compass Pointe
 7 property; do you know, sir?
 8 A. No, sir. I've asked for that information
 9 multitudes of times. And I think Mr. Stewart was
 10 deposed. And I would imagine everyone would have
 11 asked him that question. But I do not have a copy
 12 of his deposition.
 13 Q. You haven't found out one way or the
 14 other?
 15 A. No, sir.
 16 Q. I'm not asking you to disclose
 17 attorney-client privilege communication.
 18 A. I'm asking you now. How much did he spend
 19 on these properties?
 20 Q. Do you have any estimate based on your
 21 understanding of work that he did or anything you've
 22 heard from anyone as to how much they spent to
 23 repair the property?
 24 A. I would say seven-and-a-half million at
 25 least.

Page 155

1 Q. To renovate the Compass Pointe property?
 2 A. I don't know. I'm not sure if that's not
 3 both of them.
 4 Q. Just asking specifically about Compass
 5 Pointe right now.
 6 A. I don't know how much. I just heard --
 7 that's -- that's hearsay, really. Greg would cut
 8 corners if he could to save money, too. I don't
 9 know if Greg actually did everything that the people
 10 recommended he do.
 11 Q. Have you been to the property --
 12 A. No, sir.
 13 Q. -- since it was completely renovated?
 14 A. (Witness shakes head negatively.)
 15 Q. Sitting here today, you can't identify any
 16 damage that wasn't repaired by the buyers, right?
 17 A. No, sir, I can't.
 18 Q. When was the last time that you were at
 19 Compass Pointe? I know it's not called that
 20 anymore, but what used to be Compass Pointe
 21 property?
 22 A. I don't recall.
 23 Q. Was it 2006, 2007?
 24 A. I think after we sold it and got our
 25 money, I never went back.

Page 156

1 Q. I'm sorry. I think you just said this.
 2 You haven't been -- you haven't walked around the
 3 property and looked at what's been done to the
 4 property since renovation?
 5 A. No, sir.
 6 Q. You can't speak to how the renovations
 7 affected the property versus the condition of the
 8 property was in prior to hurricane Katrina; is that
 9 right?
 10 A. No, sir.
 11 Q. I'm just going to show you a document,
 12 plaintiffs' 467.
 13 (Exhibit 467 - 10/29/2006 Letter marked
 14 for identification.)
 15 MR. GAUDET: You mean defense.
 16 Q. Defense 467. Plaintiffs' Bates number
 17 1547, CH 1547. This is October 19th, 2006 letter
 18 from you to Mr. Pilger, right?
 19 A. Yes.
 20 Q. Now, you're writing, "Dear David, In
 21 accordance with our contract, Paragraph 6, Closing,
 22 calls for the seller to provide 45-day notice in
 23 writing. Please accept this letter as required
 24 notice. Although we doubt our claim will be settled
 25 with insurance company, we would appreciate you

Page 157

1 providing us with a total cost of rebuilding the
 2 complex, which information may help us with
 3 insurance recovery. Your cooperation is
 4 appreciated." Did I read all that correctly?
 5 A. Yes, sir.
 6 Q. Let's start with the first part. This was
 7 providing notice -- 45-day notice for closing?
 8 A. Yes, sir. I think the agreement that we
 9 signed required us to give them a notice, and that's
 10 what this -- that was one of the purposes for this
 11 letter is to give them that notice.
 12 Q. By October 19th, 2006, they were able to
 13 get any problems they had with their financing
 14 straightened out; is that correct?
 15 A. I don't know if it was before the 19th. I
 16 know they gave notice they had to come with the
 17 money and 45 days from October the 19th. So in that
 18 45 days, they certainly got their ducks in a row.
 19 Q. At this point then, what you were telling
 20 Mr. Pilger was that it was time to close or time to
 21 move on; is that fair?
 22 A. Yes. I had great expectations that they
 23 would close.
 24 Q. And, in fact, we know they did
 25 subsequently on December 8th, 2006. Now, at what

40 (Pages 154 to 157)

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Ralph Brockman 1/19/2010

Page 158

1 point -- we've seen this communication with
2 Mr. Pilger in October 2006. We know the closing
3 occurred in December 2006. At what point did --
4 given those dates, did you begin talks with
5 Mr. Pilger, Mr. Stewart about investing in
6 West Chase property?

7 A. I don't think it was at this time. I was
8 going to make sure we got our money and everything
9 went smooth and just like it was supposed to. It
10 was certainly after. It was after their closing, my
11 recollection is. And I'm asking them in this letter
12 for the information that would provide us with what
13 they spent rebuilding not just this one, but both
14 complexes.

15 Q. Did Mr. Pilger ever give any kind of
16 response to this letter?

17 A. Mr. Pilger is not the contractor. Madison
18 was the contractor, but, you know.

19 Q. Did either Mr. Pilger --

20 A. Both cooperative. But, man, they didn't
21 want to get involved in any lawsuit. They didn't
22 want to have to be deposed. They wanted to run go
23 hide. They didn't want -- and this is why I had so
24 much problem getting this information.

25 Q. You're not aware of either Mr. Pilger or

Page 159

1 Mr. Stewart or anyone affiliated with the buyers
2 ever responding to Defense 467?

3 A. Not aware of it. I'm going to ask my
4 attorney here to go check the deposition of the two
5 of them and see if they gave that information in the
6 deposition.

7 MR. GILMORE: Let's take a five-minute
8 break.

9 VIDEOGRAPHER: Off the record at 2:04.
10 (Off the record.)

11 VIDEOGRAPHER: On the record at 2:13.
12 (Exhibit 296 - Amended Complaint marked
13 for identification.)

14 Q. (By Mr. Gilmore) Let me hand you what's
15 been marked Defense 296. It's the amended complaint
16 filed in this Compass Pointe case. Do you recognize
17 this document, sir?

18 A. Yes.

19 Q. Sitting here today, are there any errors
20 or inaccuracies that you're aware of in this
21 document?

22 A. Not that I'm aware of.

23 Q. Turn to Page 5 of this document. You'll
24 see "Second Claim, Breach of Contract, and
25 Declaratory Relief." See Paragraph 22 says, "Under

Page 160

1 the contractual coverage Nationwide agreed to ensure
2 for direct physical loss to cover property from a
3 covered cause of loss." Did I read that correctly?

4 A. Yes, sir.

5 Q. Paragraph 23, "The damage and loss of
6 property was covered by contract." Did I read that
7 correctly?

8 A. Yes, sir.

9 Q. Which damage and loss of the property was
10 covered by the contract?

11 A. I don't understand your question.

12 Q. In your complaint, plaintiffs make the
13 statement that the damage and loss to the property
14 was covered by the contract?

15 A. Right.

16 Q. And I want to know which damage and loss
17 to the property are plaintiffs claiming are covered
18 by the contract?

19 A. I don't know. I think all of the damage
20 involved windstorm and driven was what we considered
21 to be covered by the contract.

22 Q. In this litigation, plaintiffs have
23 designated Lewis O'Leary to prepare estimates of
24 damage and loss to the property that plaintiffs are
25 claiming were covered by the contract, right?

Page 161

1 A. I'm trying to find that paragraph. Can
2 you help me?

3 Q. Paragraph 22 on Page 5, 22 and 23.

4 A. Yes, I see that. But I don't see where it
5 refers to "Lewis O'Leary."

6 Q. I'm not saying it does. It was just a
7 question. In this litigation, plaintiffs have
8 designated Lewis O'Leary as an expert who is
9 preparing estimates of the damage and loss to the
10 property that was covered by the contracts,
11 plaintiffs are claiming, right?

12 A. I think so, amongst others, also. I think
13 there were other experts besides Lewis.

14 Q. What other experts have plaintiffs
15 designated in this litigation?

16 A. I don't -- I don't see his witnesses
17 outline here. But I do know that he at one time
18 talked about an engineer on the coast that knew that
19 windstorm hit, et cetera, et cetera, et cetera.

20 Q. In terms of someone who's calculating a
21 number, a description, dollar figure for the damage
22 and loss to the property that was covered by the
23 contract which Compass Pointe is claiming in this
24 litigation, is there anyone other than Lewis O'Leary
25 in this case?

41 (Pages 158 to 161)

Ralph Brockman 1/19/2010

Page 162

1 A. Not to my knowledge, no, sir. I think
2 there was another meteorologist or something like
3 that.
4 Q. Sure. With respect --
5 A. Other experts, but not regarding the
6 physical damage to the property.
7 Q. Paragraph 24 of the complaint reads,
8 "Nationwide's breach of contract and conduct caused
9 contract damages for the complete and full extent of
10 damage and loss to the apartment buildings, building
11 personal property, and for debris removal, and loss
12 of business income." Did I read all of that
13 correctly?
14 A. Yes, sir.
15 Q. Let's go through each of those categories.
16 "The complete and full extent of damage and loss to
17 the apartment buildings," those are Lewis O'Leary's
18 damage estimates for physical damage to apartment
19 buildings that plaintiffs are putting forward,
20 right?
21 A. Yes, sir.
22 Q. The next one, "Building personal
23 property," are you aware of anything other than any
24 building personal property items in Mr. O'Leary's
25 estimates that plaintiffs have identified as an item

Page 163

1 of damage in this case?
2 A. The only personal property that I'm aware
3 of would be in the -- the -- in the manager's
4 office. You know, you have machine -- adding
5 machines, whatever, maybe computers, your couches,
6 and you know, reception area. You have maintenance
7 equipment, maybe for the pool and the yards, the
8 lawn mowers, you know, brooms and brushes and hoses
9 and whatnot. I -- you know, just normal stuff that
10 is not considered part of the physical complex. I
11 think that's what he's referring to as personal
12 property.
13 Q. When you say "he," you mean?
14 A. The lawyer, Will Clark.
15 Q. Okay.
16 A. Wynn Clark.
17 Q. The attorneys who prepared this on behalf
18 of plaintiffs?
19 A. Yes, sir.
20 Q. Now, you ran through a number of items
21 that may be building personal property. Can you
22 tell me sitting here today, do you know how many of
23 those, if any, were damaged or destroyed by
24 hurricane Katrina?
25 A. I would imagine all of them did, but I

Page 164

1 don't think it's a great, great huge number. I
2 mean, not like the scope that happened with the
3 buildings.
4 Q. Can you give an estimate at all of what
5 personal building, personal property?
6 A. Fifty to 75,000, probably. It's a
7 ballpark, yes.
8 Q. Has anyone on behalf of plaintiffs made an
9 effort to itemize what the business personal
10 property --
11 A. Not to my knowledge.
12 Q. -- plaintiffs have lost? Just a reminder,
13 you've been doing real good so far. But I don't
14 know it's getting late in the day. Let me try and
15 finish my question --
16 A. I'm sorry.
17 Q. -- before you answer. Much better than
18 last time I have to say.
19 MR. GAUDET: I agree.
20 Q. Obviously, whatever your attorneys have
21 done to prepare you.
22 The next category is "Debris Removal."
23 Again, anything other than the estimate that is in
24 Mr. O'Leary's estimate, do you know of an estimate
25 for debris removal?

Page 165

1 A. No, sir. I don't know if Mr. O'Leary's --
2 that could be double dip there. Mr. O'Leary
3 estimated for debris removal that would not be
4 additional debris removal unless he overlooked what
5 the tenants left themselves and abandoned. I just
6 would have to ask Mr. O'Leary if he included in his
7 estimate the debris removal of tenant possessions.
8 Q. Did plaintiffs incur expense --
9 A. Not to my knowledge.
10 Q. I'm sorry. Did plaintiffs incur expenses
11 for debris removal prior to the sale of the
12 property?
13 A. Not to my knowledge.
14 Q. And then the final category that's in
15 Paragraph 24 of the amended complaint is "Loss of
16 Business Income," correct?
17 A. Yes, sir.
18 Q. That's not something that Mr. O'Leary has
19 or is going to calculate, right?
20 A. I think that's loss of rent. It may be
21 the income profit. Maybe he's referring to the --
22 we have a loss of the profit from losing the
23 facility. We now have an ongoing loss of profit
24 that's 17, 18 grand a month I was telling you about.
25 He may be referring to that.

42 (Pages 162 to 165)

Ralph Brockman 1/19/2010

Page 166

1 Q. And that was my question. In terms of
2 loss of business income, that would mean profits
3 from the income, the rental income that have been
4 generated?

5 A. Yes, sir.

6 Q. Can you give me every reason that
7 plaintiffs are contending Nationwide should be
8 liable for -- strike that question.

9 Can you give me -- are you contending that
10 -- in this litigation that Nationwide did not act in
11 good faith?

12 A. Yes, sir. I believe that's what it says.

13 Q. Can you give me every reason factually for
14 plaintiffs contending that Nationwide did not act in
15 good faith?

16 A. I'm a bottom-line businessman. And when,
17 in my opinion, windstorm damaged about 85 percent of
18 this property. I think even Nationwide's engineer
19 said 75 percent in his report. If you follow any
20 rule of estimation at 75 or 85 times the physical
21 damage caused by windstorm, you would get an amount
22 that would grossly exceed what was tendered to this
23 partnership.

24 I have some experience in flood. I had a
25 project of 80 units flood about two feet about two

Page 167

1 weeks before I completed it. It's called
2 Meadowbrook Park in Monroe, Louisiana. It was all
3 flood. It from big rain, backed up a ditch, and
4 flooded it. It was simple. You just take a skill
5 saw and set it aside the fence and rip off the
6 sheetrock three or four foot above the slat. You
7 put six carpenters to work and six skill saws,
8 you've taken out the -- you've ripped the sheetrock
9 out from four feet down, and take insulation out,
10 and take base cabinets out. And if the floor is
11 destroyed, you take it out and put it all back in
12 and it's over with. And that property I restored in
13 six weeks' time, eight weeks most. So I have some
14 experience in flood, but I have never seen anything
15 so devastating as this.

16 As I pointed out, you have eight-inch
17 masonry wall blown to the ground that were in walls
18 to these buildings. You have rain that penetrated
19 the seals on windows. You had subfloors wet as they
20 could be on second floor. It was catastrophic and
21 if you built it back to how it was at the beginning,
22 you'd have to replace the floors, which explains
23 these estimates being so far apart.

24 So I saw then that whether Nationwide had
25 their backs to the wall because Bank of America

Page 168

1 bought them, or they had backs to the wall because
2 Katrina was so catastrophic to their exposure, they
3 -- they chose to draw the line in the sand and --
4 and say, "It's all flood." It's 90 percent flood,
5 apparently, not 10 percent. They didn't even say
6 it's 75 flood, which is what their own engineer said
7 it was -- 75 windstorm. Their own engineers said
8 75. They didn't offer that.

9 I mean, Rob, it's not your fault. You had
10 client back to the wall, but the client breached his
11 contract. In my opinion, he didn't bargain in good
12 faith. He stonewalled my -- my adjuster,
13 WorldClaim. He stonewalled Lewis O'Leary. Lewis
14 thought we were entitled to appraisal. He was
15 stonewalled on that. He never got a chance to get
16 any money. He never got any money collected from --
17 from the -- from your client. He never did. He got
18 paid his 200 an hour just like he saw. He never got
19 any money when he had at one time some incentive to
20 get more.

21 The only person that got any money is an
22 attorney by the name of Matthew Brown who follows up
23 this contract is filed. And we received through
24 discovery two subsequent payments. Even if you had
25 those payments, you get an amount that's way less

Page 169

1 than what I believe was the honest windstorm and
2 damage on Compass Pointe and Carriage House.

3 Q. Let's go through this. You don't know the
4 exact amount that the buyers spent to repair the
5 property, right?

6 A. No, sir.

7 Q. Nationwide never told you that it was
8 90 percent flood damage. You can't point to any
9 communication for that?

10 A. Their engineers said 75 caused by
11 windstorm. That's the only thing I read in some of
12 their reports.

13 Q. Right. And nowhere has Nationwide ever
14 said that they thought it was 90 percent flood
15 damage to the property?

16 A. No, no. I think it's -- no. But if you
17 interpellate the numbers, that's about what you get.

18 Q. Well, interpellate -- when you say
19 "interpellate the numbers," you have to interpellate
20 the numbers based on estimates from --

21 A. You've got --

22 Q. Hold on, sir. You've got to interpellate
23 the numbers based on either estimates from
24 WorldClaim or estimates from Lewis O'Leary. Those
25 are the only two estimates you know of the actual

43 (Pages 166 to 169)

Ralph Brockman 1/19/2010

Page 170

1 damage to Compass Pointe, right, other than
 2 Nationwide's?
 3 A. Other the scope -- we have -- we have
 4 Nationwide. You have WorldClaim's. You have an
 5 architect I hired that identified scope. You have
 6 an owner that bought it and redid it. There are a
 7 lot of sources of what they did. They differ in
 8 scope. That's why you have different amounts in
 9 losses.
 10 VIDEOGRAPHER: Off the record at 2:29.
 11 End of tape four.
 12 (Off the record.)
 13 VIDEOGRAPHER: Beginning tape five. On
 14 the record at 2:30.
 15 Q. (By Mr. Gilmore) You're referring to an
 16 architect. Timothy Brown didn't calculate or
 17 estimate figures to repair the damages, right?
 18 A. Yes, sir. Only scope.
 19 Q. WorldClaim did provide estimates, right?
 20 A. I think scope and prices.
 21 Q. Mr. O'Leary advised plaintiffs that those
 22 estimates were no good and he was going to do new
 23 ones, correct?
 24 A. Yes, sir. Because they did not follow the
 25 scope that Brandon had, nor did they follow the

Page 171

1 scope that the pitchers indicated with that.
 2 Q. Mr. O'Leary has prepared estimates with
 3 the help of an assistant named Jerry Wiggins to your
 4 knowledge, right?
 5 A. Yes. Yes, sir.
 6 Q. As we sit here today, do you know whether
 7 Lewis O'Leary and Jerry Wiggins have generated
 8 estimates for wind damage to the Compass Pointe
 9 property that they themselves consider reliable and
 10 worth presenting to a jury?
 11 A. It's my recollection that they did, but
 12 that that was thrown out and they had to redo a
 13 total estimate of the total damages -- the total
 14 damages. And that the court would decide what was
 15 windstorm in damage and what would be flood. So
 16 they are now redoing their numbers for the total
 17 loss, which would include both. And they're not
 18 getting involved in trying to determine which is
 19 flood and which is windstorm. Now, that's my
 20 recollection now.
 21 Q. You haven't learned in this litigation
 22 that Mr. O'Leary and Mr. Wiggins have said that they
 23 need to redo their estimates of damage for the
 24 properties, Carriage House and Compass Pointe?
 25 A. I believe they were directed by Mr. Brown

Page 172

1 that that's what he had to do. That in the
 2 discovery with courts and that -- that he needs to
 3 get away from saying what is windstorm. He needs to
 4 say what the total is. And he can then explain why
 5 he thinks so much of it is one than the other. But
 6 he is now engaged to prepare what the total loss
 7 was.
 8 Q. Do you know if Mr. O'Leary is an engineer,
 9 licensed engineer?
 10 A. No, sir, I don't.
 11 Q. Have you ever asked him if he's a licensed
 12 engineer?
 13 A. No, sir, I haven't.
 14 Q. Is it important to you -- do you think it
 15 would be important whether you have an engineer
 16 analyze the extent and cause and scope of damage to
 17 your properties?
 18 A. An engineer that doesn't have as much
 19 experience in building as say an architect or
 20 building contractor would or insurance adjuster, he
 21 may know more about flow of water down a sewer pipe,
 22 and lift stations, and -- and those type of things,
 23 and drainage, and, you know, on properties, and
 24 utilities. But as far as buildings, I've never seen
 25 engineers be that up-to-date on what buildings

Page 173

1 should cost. If you use one, you're going to have a
 2 big overrun. I can tell you that.
 3 (Exhibit 297 - Plaintiffs' Responses to
 4 Nationwide's Interrogatories and Request For
 5 Production marked for identification.)
 6 Q. I'm going to hand you what's been marked
 7 as Defense Exhibit 297. This is Plaintiffs'
 8 Responses to Nationwide's Interrogatories and
 9 Request For Production. Have you seen this document
 10 before, sir?
 11 A. I don't recall it. I probably have. I
 12 haven't had a chance to review it here. Signed by
 13 Nathan. Yes, sir.
 14 Q. When you say "yes, sir," you do recall
 15 seeing this before?
 16 A. I believe so, yes, sir.
 17 Q. Before it was provided to Nationwide, did
 18 you review it to ensure that it was true and
 19 accurate?
 20 A. Yes, sir.
 21 Q. Sitting here today, you're not aware of
 22 any things that need to be corrected, right?
 23 A. No, sir, not -- it's a pretty long
 24 document, but -- it -- read as fast possible. I
 25 don't see anything that needs to be corrected.

44 (Pages 170 to 173)

Ralph Brockman 1/19/2010

Page 174

1 Q. If you turn to -- let's see, it's a fax
2 header at the top. It's Page 25. It's response to
3 Interrogatory 23. And Interrogatory Number 23 asks
4 plaintiffs to, "Identify each item or category of
5 damages for which you seek an award in this lawsuit.
6 And as to each such item or category provide the
7 following: (A) the amount of monetary compensation
8 sought for each item or category of damages; (B) the
9 method used to derive each amount identified in (A);
10 (C) the factual legal basis for each item or
11 category of damage you claim, including the identity
12 of each specific provision of the commercial policy
13 or any other document that supports your contention
14 that coverage exists; and (D) the identity of all
15 documents and persons with knowledge that relate to
16 each item or category of damages you assert." Did I
17 read all that correctly?

18 A. Yes.

19 Q. Plaintiffs' response reads, "Categories of
20 damage include but are not limited to property
21 damage, business income loss, expert expense, loss
22 of rents, loss of contents, business, personal, and
23 property, and loss of future revenues. The amount
24 of compensation, method used to calculate amounts,
25 and factual basis for each category will be

Page 175

1 explained in any reports provided by plaintiffs'
2 experts." Did I read that correctly?

3 A. Yes, sir.

4 Q. Let's go through the categories. Property
5 damage we discussed, and that's -- expert that
6 plaintiffs have designated presents estimate of
7 property damage is Lewis O'Leary, right?

8 A. Yes, sir. Where are you -- where are you
9 now?

10 Q. I'm looking at response to Interrogatory
11 Number 23.

12 A. Yes, sir. In the first title it says?

13 Q. "Property. Categories of damage include
14 but are not limited to property damage." That's the
15 first part of plaintiffs' response, right?

16 A. Right.

17 Q. Property damage, an estimate or estimates
18 are being presented by Lewis O'Leary, right?

19 A. Yes, sir.

20 Q. Business income loss is the loss of rent
21 that we discussed previously?

22 A. I think this is the income that the
23 partnership loses, not the loss of rents.

24 Q. Well, the --

25 A. Loss of profit.

Page 176

1 Q. The loss of profit would be a subset of
2 loss of rents, right? The loss of profit is net.
3 The loss of rent is gross; is that fair to say?

4 A. Yes, sir.

5 Q. You'll see the next -- next two categories
6 are "Extra Expense" and then "Loss of Rents." So if
7 we take business income loss -- sorry. If we take
8 loss of rents, that would include business income
9 loss, the profits, the partnership, right?

10 A. I think so.

11 Q. Now, we -- there are two others here,
12 "Extra Expense" and "Loss of Contents, Business,
13 Personal Property." We discussed those a little
14 bit. "Extra Expense," you can't identify a
15 categorization of what extra expense plaintiffs have
16 incurred beyond property damage, loss of business
17 contents, and loss of business income, right?

18 A. I don't know if he means the -- an extra
19 expense of some of these fees we -- we had to endure
20 or prepayment penalties, legal fees, or expert
21 witnesses. I don't know. I know the attorney could
22 explain that better than I.

23 Q. Well, I mean, I appreciate that. And in
24 fact, Mr. Gaudet has undertaken to verify these
25 responses in a separate document. But my question

Page 177

1 is you're suing my client and you're asking for a
2 lot of money. I'm just trying to understand the
3 basis and the amount. And you have these categories
4 here. Is the -- can plaintiffs' point to what extra
5 expense they're claiming and how much that extra
6 expense is in this litigation from my client?

7 A. Well, I'm not the lawyer, but I consider
8 damages, extra expenses, those to -- if -- if the
9 claim is paid off timing manner, I don't have
10 multitudes of lawyers. I don't have multitudes of
11 extra witnesses. I don't have Lewis O'Leary. I
12 don't have Wynn Clark, Nathan Gaudet, Matthew Brown,
13 John Landry. I don't have the prepayment penalty
14 with LNR. I don't have the firm of Brunini firm
15 fees. There's an -- I don't have the travel expense
16 coming down to all these depositions and back. And
17 yes, I would consider those extra expenses that had
18 the claim been paid and satisfied promptly, even if
19 I had to take 15, 20 percent less than I thought I
20 was due, those expenses would have been eliminated.
21 In my mind, I think they're extra expenses. I agree
22 with your interpretation that the loss of income is
23 gross. Business income is net. Loss of contents we
24 discussed. Probably 50 to 75 can be maximum. My
25 brother can probably give that breakdown even better

45 (Pages 174 to 177)

Ralph Brockman 1/19/2010

Page 178

1 than I. Loss of future revenues and loss of
2 business income are kind of redundant. How far in
3 the future are you entitled to any loss of revenues
4 now that you've lost your property? I don't know.
5 That's a -- that's a legal question. But they're
6 one -- you're counting twice there and you can't
7 count it twice.

8 Q. So -- so let's -- if you look at this
9 then, we can divide into property damage, loss of
10 business revenue, which would include profit going
11 back or into the future at some point?

12 A. Correct.

13 Q. Extra expense. I want to revisit that.
14 And loss of business, personal property contents; is
15 that fair?

16 A. Yes, sir.

17 Q. Those are the categories plaintiffs
18 seeking at, right?

19 A. Yes, sir.

20 Q. Let's go back to "Extra Expense." You
21 threw a lot of things in there regarding the lawsuit
22 with LNR Partners. We looked at documents that
23 showed almost immediately after the storm when
24 Nationwide issued significant payments. We were
25 here so we know you don't think they're sufficient.

Page 179

1 But significant payments, LNR Partners was still
2 holding onto those and is not letting you use any of
3 those monies to restore the property; that's fair,
4 right?

5 A. They knew 485,000 was not going to restore
6 this property.

7 Q. Well, sir, you actually sued them saying
8 that by them holding that amount of money, you
9 weren't able to use those funds for restoration.
10 Isn't that what you said in that lawsuit?

11 A. Absolutely, it wasn't. I was hopeful that
12 -- that -- that either WorldClaim or Lewis O'Leary
13 or somebody would get a fair shake from Nationwide,
14 and you add that to what Nationwide paid
15 additionally, that the two would close the gap,
16 which didn't happen.

17 Q. It's fair to say that -- well, sir, in the
18 lawsuit against LNR, we read the complaint and
19 statements submitted to the court that plaintiffs
20 believed because LNR refused to release these
21 insurance proceeds, they had to sell the property at
22 distressed value; that's fair, right?

23 A. Yes, sir.

24 Q. So when we talk about paying the lawyers
25 at Brunini or John Landry, you're talking about

Page 180

1 payments for fees in that lawsuit that chose to
2 bring against LNR Partners, right? It's yes or no
3 questions. That's what you're referring to when you
4 list those, correct?

5 A. Yes, but there's a chain of events. I
6 don't have a problem with LNR Partners if I have
7 enough money from Nationwide.

8 Q. Well, we -- you don't know --

9 A. But when I don't get enough money from
10 Nationwide, then I have a problem with LNR Partners.
11 Indeed, yes, we sued them. As far as I am
12 concerned, the more we got from them, the less
13 exposed Nationwide is because they started the chain
14 of events.

15 Q. Well --

16 A. And we did settle for 50 percent, which
17 was a pretty good settlement under the -- according
18 to what the Brunini firm said. He was delighted to
19 get 50 percent because they were in the right to get
20 a hundred percent.

21 Q. Sir, they didn't let you use any of the
22 \$1.2 million that Nationwide had paid for these two
23 properties to restore the properties following
24 hurricane Katrina?

25 A. That is correct.

Page 181

1 Q. Now, the second part of plaintiffs
2 response to Interrogatory Number 23 says, "The
3 amount of compensation method used to calculate
4 amounts and factual basis for each category will be
5 explained in any reports provided by plaintiffs'
6 experts." Did I read that correctly?

7 A. Yes.

8 Q. Now, let's talk about the first category
9 of damage. For property damage, the plaintiffs'
10 expert reports that plaintiffs are putting forth in
11 this case are Mr. O'Leary's, right?

12 A. And his associate.

13 Q. His assistant, Jerry Wiggins?

14 A. Yes, sir.

15 Q. Plaintiffs have not identified or
16 designated a expert who has calculated lost business
17 revenues, either past or future; that's fair to say,
18 right, sir?

19 A. My counsel has asked me to compute what
20 the loss of business income is. And I have brought
21 it and I think he plans to introduce that into
22 evidence today.

23 Q. Other than what you yourself have
24 attempted to calculate as lost revenues, no other
25 expert on behalf of plaintiffs has attempted to

46 (Pages 178 to 181)

Ralph Brockman 1/19/2010

<p style="text-align: right;">Page 182</p> <p>1 calculate lost revenues, right?</p> <p>2 A. That's to date correct.</p> <p>3 Q. When you say "to date," are plaintiffs</p> <p>4 working with another expert or consultant to try and</p> <p>5 calculate lost revenues?</p> <p>6 A. No, sir. Before it would come to trial,</p> <p>7 they may so choose. It depends on their -- their</p> <p>8 decision to -- is it worth it to go get another</p> <p>9 expert or not. I'll leave that up to them. There</p> <p>10 are appraisers that can -- can project loss of</p> <p>11 future income and value what that could be. May be</p> <p>12 worth while doing so. It may not be worth expense,</p> <p>13 but I will leave that up to counsel.</p> <p>14 Q. Sir, this litigation has been going on for</p> <p>15 quite a while, right?</p> <p>16 A. Oh, yes, sir.</p> <p>17 Q. And there is a trial date in this case --</p> <p>18 I'm sorry -- Carriage House that's April -- this</p> <p>19 case is set for June of this year. You're aware of</p> <p>20 that, right?</p> <p>21 A. Yes, sir.</p> <p>22 Q. You understand part of the reason why I'm</p> <p>23 taking your deposition is so that I can understand</p> <p>24 defending on behalf of my client what plaintiffs are</p> <p>25 arguing and how much money they're trying to get</p>	<p style="text-align: right;">Page 184</p> <p>1 MR. GILMORE: Okay. Let's go off record</p> <p>2 and make a copy of it.</p> <p>3 VIDEOGRAPHER: Off record at 2:48.</p> <p>4 (Off the record.)</p> <p>5 VIDEOGRAPHER: On the record at 2:51.</p> <p>6 Q. (By Mr. Gilmore) Sir, while we're having</p> <p>7 copies of that document you brought with you today,</p> <p>8 I'm going to hand you what's been marked as Defense</p> <p>9 Exhibit 300.</p> <p>10 (Exhibit 300 - Plaintiffs' Answers to</p> <p>11 Defendants' Second Set of Interrogatories marked for</p> <p>12 identification.)</p> <p>13 Q. This document is Plaintiffs' Answers to</p> <p>14 Defendants' Second Set of Interrogatories. Have you</p> <p>15 seen this document before?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Did you have an opportunity to help</p> <p>18 prepare it or review it for accuracy?</p> <p>19 A. I reviewed it. I didn't prepare it. It</p> <p>20 was prepared by my attorney with the assistance of</p> <p>21 all our files and information we provided him.</p> <p>22 Q. Sitting here today, are you aware of any</p> <p>23 errors or inaccuracies in this document?</p> <p>24 A. No, sir, I'm not.</p> <p>25 Q. If you turn to the second page of Defense</p>
<p style="text-align: right;">Page 183</p> <p>1 from client, right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. You would agree it's fair to give</p> <p>4 Nationwide timely notice of what plaintiffs' damages</p> <p>5 claims are, right?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Sir, how much are plaintiffs claiming that</p> <p>8 they are owed in lost future revenues?</p> <p>9 A. It's not introduced yet, but I brought</p> <p>10 with me a balance sheet, an income statement of</p> <p>11 number of properties and I brought a number of</p> <p>12 properties. And most proper methodology for -- most</p> <p>13 frequently used methodology for valuing the</p> <p>14 properties what we call trading 12 months profit and</p> <p>15 loss statement.</p> <p>16 Q. Do you have a copy of this document from</p> <p>17 this closing?</p> <p>18 A. Yes, sir. In fact, here, you're welcome</p> <p>19 to it and -- into evidence. That this stated</p> <p>20 balance sheet on Compass Pointe, December 31, 2005.</p> <p>21 It gives the -- it's July -- only gives --</p> <p>22 Q. Before we talk about it, do you have a</p> <p>23 copy for me or do we need to go off the record?</p> <p>24 MR. GAUDET: We'll go off record and make</p> <p>25 a copy.</p>	<p style="text-align: right;">Page 185</p> <p>1 Exhibit 300, you'll see Interrogatory Number 27 from</p> <p>2 Nationwide, which asks plaintiffs, "Please state the</p> <p>3 date on which you originally purchased the Compass</p> <p>4 Pointe Apartments complex and the original purchase</p> <p>5 price." Did I read that correctly?</p> <p>6 A. Yes, sir.</p> <p>7 Q. It says, "Response: Compass Pointe</p> <p>8 Apartments complex was originally acquired by</p> <p>9 plaintiffs on January 29th, 1998, the price of</p> <p>10 1,970,000." Did I read that correctly?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Sitting here today, to the best of your</p> <p>13 knowledge, that is accurate sales date and price?</p> <p>14 A. Yes, sir. I believe so. Surely</p> <p>15 researched it and put the right price down. I can't</p> <p>16 remember, you know, what happened 12 years ago. But</p> <p>17 I would assume they researched the file and found</p> <p>18 out from my office manager that this was acquisition</p> <p>19 price.</p> <p>20 Q. The next interrogatory, Number 28, says,</p> <p>21 "Please itemize any and all expenses you incurred as</p> <p>22 a result of repairing damage and/or renovating</p> <p>23 Carriage House (sic), Compass Pointe complex</p> <p>24 following hurricane Katrina, including a list which</p> <p>25 identifies which items and repairs/renovation you</p>

47 (Pages 182 to 185)

Ralph Brockman 1/19/2010

Page 186

1 claim were necessary to repair the damage caused by
2 hurricane Katrina." Did I read that correctly?

3 A. Yes, sir.

4 Q. And you understand this interrogatory is
5 asking for information on repairs for Compass Pointe
6 Apartments, right?

7 A. Yes, sir.

8 Q. That's how plaintiffs responded to it?
9 That's the request that plaintiffs responded to for
10 information on Compass Pointe?

11 A. Yes, sir.

12 Q. Now, the response on the next page reads,
13 "Please see attached accounts payable check
14 register." Did I read that correctly?

15 A. Yes, sir.

16 Q. Let me now hand you Exhibit 304 which is
17 the document produced by plaintiffs entitled "Answer
18 to Interrogatory Number 28," the one that we just
19 read.

20 (Exhibit 304 - Answer to Interrogatory
21 Number 28 marked for identification.)

22 Q. Are you familiar with this document,
23 Mr. Brockman?

24 A. No, sir.

25 Q. How did plaintiffs determine that this was

Page 187

1 the document that responded to Interrogatory Number
2 28 which asked for all expenses plaintiffs incurred
3 to repair damage after hurricane Katrina?

4 A. I would assume my attorney dealt with my
5 office manager and asked for this breakdown. And
6 she -- she provided this to them because it is a
7 check register of what the vendor paid. This lists
8 check number, given the date, and given amount of
9 each, and then you just read the total.

10 Q. So the title of this document is "Accounts
11 Payable Check Register For Compass Pointe." Did I
12 read that correctly?

13 A. Yes, sir.

14 Q. Do you know how this document was created?

15 A. I just told you. I thought -- I assume it
16 was my office manager, Susan Belk, who -- who went
17 into the books of Compass Pointe and broke this out
18 per the request of my attorney.

19 Q. And is it your understanding and
20 contention that each of the items listed on this
21 accounts payable check register was expenses that
22 plaintiffs incurred to repair the property?

23 A. You say "to repair the property." We
24 didn't repair the property. Okay? The person we
25 sold to completely repaired the property. But these

Page 188

1 are the incidental items that we -- we did during
2 this interim period. We did pay for out of pocket
3 during this period of time.

4 Q. The interim period you're referring to is
5 the date of the first check payment --

6 A. Yes.

7 Q. -- which is September 1st, 2005?

8 A. Yes, sir.

9 Q. The last payment on the last page is dated
10 October 27th, 2006; is that right?

11 A. That's correct. And the contract with --
12 was actually dated -- the lease contract was dated
13 in September of '06, but the sale went through in
14 December '06. But this were the out-of-pocket
15 expenses we paid for during that interim period, but
16 it was not to fix -- repair all the property.

17 Q. I want to first go through and just
18 establish that these -- understanding that
19 plaintiffs aren't contending this was all that was
20 required to repair the property completely. With
21 that understanding, what this does reflect is all
22 the money plaintiffs themselves paid out of pocket
23 to do any kind of repairs or renovations to Compass
24 Pointe between the time of hurricane Katrina and
25 when they transferred title to Platinum Investments;

Page 189

1 fair to say?

2 A. Yes, sir. But it also includes 3,000 for
3 that architect. I don't know if it's Brandon, but I
4 notice 3,000 was spent.

5 Q. So let's go through -- I don't know want
6 to go through each item, but maybe we can identify a
7 few of these here and you can explain what they are.
8 Now, you mentioned -- there's not page numbers on
9 this document, but it's Item 7174, "April 2006
10 payment to TV Architecture for \$3,000." That's
11 Timothy Brandon, right?

12 A. Yes.

13 Q. That's for him to repair a -- based on
14 assessment of property following hurricane Katrina?

15 A. The scope of loss. Not the monetary, but
16 the scope.

17 Q. When was the last time you spoke with
18 Mr. Brandon?

19 A. I don't know. I understand nobody was
20 happy with him, but nonetheless, he came recommended
21 and I hired him.

22 Q. I'm just asking. I assume from your
23 response that you heard that Mr. Brandon abruptly
24 left his deposition after about an hour of
25 questioning?

48 (Pages 186 to 189)

Ralph Brockman 1/19/2010

Page 190

1 A. Yes, sir. And in a very unprofessional
2 manner. That's what I heard. He was unprofessional
3 to my attorney. I think unprofessional to you or
4 whoever. He just was unprofessional through and
5 through.

6 Q. Okay. Have you had any discussion with
7 Mr. Brandon since that occurred?

8 A. No, sir. I don't want to have anymore
9 with him either.

10 Q. Do you know if you have any intention of
11 calling him as a witness at trial?

12 A. I don't -- I don't think anybody plans to.
13 They may. They may --

14 Q. We'll ask your attorney.

15 A. -- compare his scope to what
16 Lewis O'Leary's scope is. But I don't -- I don't
17 think they want to see him again either.

18 MR. GAUDET: Laura Hill doesn't want to
19 see him again.

20 MR. GILMORE: I'm not sure about that. I
21 think she might want to finish that deposition.

22 MR. GAUDET: Maybe.

23 Q. (By Mr. Gilmore) We'll leave that for
24 another day, sir.

25 In terms of payments here, I guess a

Page 191

1 couple of payments, who is Norman Allen? He's on
2 first page, Norman E. Allen, Jr. It appears several
3 line items for him throughout the document actually.

4 A. He may be the maintenance man. I don't
5 know. My brother could shed some light on that.

6 Q. That's a question for Bill Brockman?

7 A. Yes, sir.

8 Q. How about Valerie Oliver? Do you know who
9 she is?

10 A. No, sir. That's another one.

11 Q. D-I-B-S, they appear on this chart in
12 several places, or Dibs?

13 A. What was that name?

14 Q. Well, it's D-I-B-S, Chem and SPC, Inc.?

15 A. Chemical and something, Inc. I don't
16 know. It could be Chemical Spray Loans or whatever.

17 Q. Stillworth or Stallworth Discount, I'm
18 assuming, Corp., do you know what that is?

19 A. No, sir.

20 Q. Singing River Electric and General
21 Electric Company. We know what General Electric is.
22 Do you know what Singing River Electric is?

23 A. No, sir.

24 Q. There is several payments to Sunquest
25 Properties. Do you know what those payments are

Page 192

1 for?

2 A. No, sir. It might be reimbursements for
3 something they -- they spent.

4 Q. There's a item in November 2005, a payment
5 to Monroe Aviation of \$1,047. That's on the third
6 page.

7 A. What date?

8 Q. November 2005, November 14th, 2005,
9 Item 7032.

10 A. November '05.

11 Q. Uh-huh (affirmative response.)

12 A. Yes, sir, I see. That's probably flight
13 down here.

14 Q. That's to pay for you and
15 Mr. Bill Brockman to fly down?

16 A. Yes. Or one or the other to fly down and
17 back.

18 Q. That's a -- just a private plane company
19 that you contract with to fly you and him down?

20 A. Yes. Well, it's our own company.

21 Q. Oh, you own Monroe Aviation?

22 A. Yes, sir. But we pay so much an hour when
23 we use the plane to offset the operating expense.

24 Q. When you say it's your own, it's owned by
25 you and Bill Brockman?

Page 193

1 A. No, not Bill. That one is owned just by
2 me.

3 Q. How many planes does Monroe Aviation have?

4 A. Just one.

5 Q. What kind of plane is it?

6 A. Well, it was a different plane back then.
7 I forget what it was. It was a twin-engine plane.

8 Q. Propel or twin-engine propeller?

9 A. Yes.

10 Q. There's some payments to Rainbow Spring
11 Water, Inc. Do you know what that's for?

12 A. No, sir.

13 Q. Would Bill Brockman be in better position
14 to answer questions about expenses here?

15 A. Yes, sir. That's what most of this page
16 is that you wanted a copy of at the end is questions
17 that he should prepare for.

18 Q. Please remind me at the end to mark and
19 copy that so that we know what to cover with him
20 that you weren't able to cover. Is that what you're
21 saying your list is?

22 A. Yes.

23 Q. So I'll ask him specific questions. But
24 is it Compass Pointe, the plaintiffs' position that
25 this document and the \$71,537.92 is the total amount

49 (Pages 190 to 193)

Ralph Brockman 1/19/2010

Page 194

1 of expenses incurred as a result of any repairs or
 2 renovations that plaintiffs did perform on the
 3 property prior to selling it to Platinum
 4 Investments?
 5 A. That's my interpretation, but my attorney
 6 prepared.
 7 Q. You're the plaintiff, sir, and I am not
 8 deposing Mr. Gaudet or Mr. Brown. So I just want to
 9 make sure that's what plaintiffs' response is?
 10 A. Yes, sir.
 11 Q. Now, this is just a plaintiff
 12 clarification. I'm not sure if you'll be able to
 13 answer this. You're still with me on the same
 14 document, Defense Exhibit 300?
 15 A. Yes, sir. Which interrogatory?
 16 Q. I want to go back to Interrogatory
 17 Number 25, which says, "Please provide a list of all
 18 tenants of the subject property as of August 29th,
 19 2005, including any and all last known contact
 20 information for such tenants." And response reads,
 21 "Please see tenant list attached hereto. Contact
 22 information has been requested and will be provided
 23 upon receipt of same."
 24 (Exhibit 303 - Answer to Interrogatory
 25 Number 25 marked for identification.)

Page 195

1 Q. Let me hand you what's been marked as 303,
 2 which is what plaintiffs produced to us. It's a
 3 document entitled "Answer to Interrogatory
 4 Number 25." You see it says unit report date is
 5 August 31st, 2005?
 6 A. Yes, sir.
 7 Q. Is this the list of tenants who were
 8 occupying the Compass Pointe Apartments as of the
 9 date of hurricane Katrina?
 10 A. Yes, sir.
 11 Q. So if I go to the I guess the last page of
 12 this document, you'll see it has the sum total of
 13 the tenant rent for each of these tenants, and that
 14 is 53,598; is that correct, sir?
 15 A. I don't see that number.
 16 Q. Turn to the last page of this document.
 17 A. Yes.
 18 Q. Defense Exhibit 303.
 19 A. You said 53.
 20 Q. See under -- under the column "Tenant
 21 Rent," you'll see a total.
 22 A. Yes, sir.
 23 Q. And that's 53,598?
 24 A. Right.
 25 Q. So that figure should be the total on a

Page 196

1 monthly basis that the tenants were occupying the
 2 property were paying; is that right?
 3 A. Well, I would think so, but I don't -- why
 4 are we only getting 14,000, 15,000 a month in loss
 5 of rent?
 6 Q. My next question to you, sir, given that
 7 the amount that Nationwide had calculated on monthly
 8 basis, which after that adjustment was approximately
 9 15,000, correct?
 10 A. Yes, sir.
 11 Q. That was based on information that
 12 plaintiffs had given to Nationwide. Nationwide
 13 didn't just make that number out of thin air, right?
 14 A. I would assume so, yes.
 15 Q. If you look at that \$15,000 a month number
 16 compared to the 53,598 a month that your -- that
 17 plaintiffs produced in response to Interrogatory
 18 Number 25, there is a little under about 38,000 a
 19 month difference between the two, right, sir?
 20 A. Absolutely. Now, I did not review these
 21 answers like I did the interrogatory. His -- his
 22 response I reviewed that you read to me, I didn't
 23 review this.
 24 Q. Well, sir, I mean, do you understand what
 25 an interrogatory is? It's supposed to be a sworn

Page 197

1 statement from a party answering information that's
 2 requested by the other party, right?
 3 A. Yes, sir. And it says "Contact
 4 Information. Our response has been requested and
 5 will be provided upon receipt of same." So at the
 6 time I read this, I don't have that -- that -- this
 7 information we're going over. I'm reading this
 8 response.
 9 Q. Sure. Well, let me --
 10 A. And he didn't even provide it at this
 11 time. This came later. I don't know what time this
 12 was submitted. It's not dated, unfortunately. Yes,
 13 it is. This was dated 8/31/05. This interrogatory
 14 is dated when?
 15 Q. This interrogatory response was given to
 16 us 28th -- September 28th, 2009.
 17 A. What date?
 18 Q. September 28th, 2009.
 19 A. September 28th. And sometime later
 20 we'll --
 21 Q. Well, let me say this: I can't explain
 22 your interrogatory response. That's part of the
 23 reason why I'm showing you this because this is the
 24 response from plaintiffs. Now, I understand your
 25 testimony, sir, you didn't review this to ensure its

50 (Pages 194 to 197)

Ralph Brockman 1/19/2010

Page 198

1 accuracy. That's part of the reason why plaintiffs
2 had to have someone other than Mr. Gaudet to sign
3 these responses on behalf of plaintiffs.

4 My question for you is this: Putting that
5 aside, can you tell us whether this document that
6 your attorneys produced to us in response to
7 Interrogatory Number 25 is a list of the tenants as
8 of August 29th, 2005? Do you have any reason to
9 think it's not?

10 A. I have no reason to think it's not. I
11 cannot reconcile the sum total, though.

12 Q. Is there any other explanation other than
13 the fact that some tenants were remaining at the
14 property and paying rent, and only about -- those
15 tenants about 15,000 were no longer paying rent at
16 the time that Nationwide issued payments, right?

17 A. That wasn't reconcile either because that
18 doesn't reconcile.

19 Q. Plaintiffs would be in the best position
20 to know who was and who was not staying at their
21 property and paying rent, right, sir?

22 A. Yes, sir.

23 Q. Nationwide wouldn't be able to know that
24 unless plaintiff told them, "No, we have more people
25 not paying rent than this 15,000 you paid us,"

Page 199

1 right?

2 A. Correct.

3 Q. Can I ask you, sir, if you can -- I'll ask
4 your attorneys as well. To the extent there is any
5 money, any loss of rents beyond the 15,000 a month,
6 that information that Nationwide generated based on
7 what plaintiff had given to them, that they produce
8 it in discovery. Is that fair to ask?

9 A. I didn't understand that question.

10 Q. Is it -- I'm asking you, and I'll ask your
11 attorneys as well. If there's any other records
12 that plaintiffs have regarding loss of rents that
13 they claim they suffered beyond the 15,000 that they
14 gave to Nationwide already and that Nationwide used
15 as basis for its payments, plaintiffs please produce
16 that in discovery. Is that fair?

17 A. Yes, sir.

18 Q. If there are no other records, is it fair
19 to assume that the amount that Nationwide paid
20 plaintiffs for the loss of rents on a monthly basis
21 was, in fact, loss of rent that plaintiffs suffered?

22 A. Until I can reconcile this, I can't answer
23 -- I can't answer that. These have a wide
24 disparity. This shows to be a rent roll that shows
25 rents is 50 some odd thousand a month. Can I have a

Page 200

1 copy of this?

2 MR. GAUDET: Yeah.

3 A. It should be reconciled. I concur with
4 you.

5 Q. You can put that aside.

6 MR. GILMORE: Counsel, let's go off the
7 record for a few minutes. I want to have an
8 opportunity before I ask Mr. Brockman questions
9 about what's handed and marked Defense 483. I want
10 just a few minutes to review this document since it
11 and the handwriting on it were just seen today.

12 MR. GAUDET: Sure.

13 VIDEOGRAPHER: Off the record at 3:15.
14 (Off the record.)

15 VIDEOGRAPHER: On the record at 3:22.

16 Q. (By Mr. Gilmore) I had just given what
17 we've marked as Defense 483.

18 (Exhibit 483 - 12/31/2005 Balance Sheet
19 and Income Statement marked for identification.)

20 Q. This is a document that you brought with
21 you today?

22 A. Yes, sir.

23 Q. It's a balance sheet and income statement
24 for Compass Pointe Apartments for the period ending
25 December 31st, 2005; is that right?

Page 201

1 A. Yes, sir.

2 Q. It has some of your handwritten notes on
3 it, right?

4 A. Yes, sir.

5 Q. I'm prepared to ask you some questions
6 about this, sir. Just for the record, Nationwide is
7 not waiving any of its rights and reserving its
8 right to object and move to have this excluded.

9 A. Yes, sir.

10 Q. I don't need you to acknowledge it. It's
11 just for the record. I'm going to ask you questions
12 about it since you brought it with you today, and
13 since you've indicated you believe that it bears on
14 damages that plaintiffs are claiming in this case.

15 Can you turn to I guess it's -- they're
16 not page numbers. It's first page of income
17 statement, which is about halfway through, right?

18 A. Yes, sir.

19 Q. I see hand -- handwritten circles of "Loss
20 of Rents Insurance Proceeds"?

21 A. Yes, sir.

22 Q. And \$91,944, right?

23 A. Correct.

24 Q. Those are the payments that Nationwide
25 issued in claims, right?

51 (Pages 198 to 201)

Ralph Brockman 1/19/2010

Page 202

1 A. I would assume.
 2 Q. There are no other insurance proceeds for
 3 loss of rents other than Nationwide?
 4 A. No, sir.
 5 Q. Now, you got -- now, turning to -- again,
 6 there's no page numbers, but it's the third from the
 7 last -- third from the last page of this document.
 8 Again, the heading is "Income Statement For Six
 9 Months At a Glance." This is the next page that has
 10 your handwriting on it, right, sir?
 11 A. Yes.
 12 Q. Now, at the top, there's a column entitled
 13 "Year to Date This Year" that you circled?
 14 A. Yes, sir.
 15 Q. What does that column information show?
 16 A. It is 12 months. It's year to date. The
 17 -- the financials only show the trading six months,
 18 specifically, July through December. But the "Year
 19 to Date" column lists those six months, plus January
 20 through June. So your "Year to Date" column would
 21 be 12 full months of operation.
 22 Q. Now, if you look down on this chart, there
 23 is "Income Or Loss After Reserve Expense" and
 24 there's a figure there of \$201,348?
 25 A. Yes. That's after the reserve expenses,

Page 203

1 yes, sir.
 2 Q. Now, what does the \$201,348 figure
 3 represent?
 4 A. It's -- it's net cash income before any
 5 depreciation. It's the cash income that the project
 6 derived for those 12 months, trading 12 months.
 7 It's financial statement prepared by Sunquest
 8 Properties on Compass Pointe.
 9 Q. So let's -- I guess let's back up a little
 10 bit. If you turn to that page we looked at
 11 previously, first page of the income statement?
 12 A. Yes, sir.
 13 Q. That's where we -- we first look at gross
 14 income for Compass Pointe; is that right, sir?
 15 A. That's correct.
 16 Q. Now, it has rental income tenants and it
 17 lists year to date \$698,580; is that right?
 18 A. Yes, sir.
 19 Q. That would be the gross amount of all
 20 rents that tenants paid to Compass Pointe for 2005?
 21 A. Yes. I'm a little puzzled because the
 22 storm occurred in August 29th, did it not, '05?
 23 Q. It did.
 24 A. So September, October, November, December
 25 would be year loss of rent. And this is another

Page 204

1 page I'll send home with Brother to reconcile. But
 2 this would include apparently five months where we
 3 had the same rental income. However, rent collect
 4 from tenants collect from Nationwide. But I think
 5 this is what he calls potential rent because you see
 6 the number is the same all the way across the board,
 7 58,215. That's the potential rent -- rental income.
 8 The next column says "Potential Rent if 200%
 9 Complete."
 10 Q. And that's based on as you said a hundred
 11 percent occupancy, right?
 12 A. That's based on a hundred percent.
 13 Q. So if we look at the -- we were looking at
 14 the tenant list that plaintiffs produced in response
 15 to Interrogatory Number 25.
 16 A. And that totalled --
 17 Q. Why don't you pull out Defense
 18 Exhibit 303? You look at the back, you'll see the
 19 column for "Market Rent" is 58,215, correct?
 20 A. That's correct. That's potential if
 21 you're a hundred percent full.
 22 Q. That number winds up with number in income
 23 statement, right?
 24 A. Yes, sir.
 25 Q. The difference between market rent and

Page 205

1 tenant rent is the tenant rent column figures are
 2 what plaintiff -- tenants are actually paying?
 3 A. That's right.
 4 Q. Versus the market rent is what plaintiffs
 5 believe they could rent to a new tenant tomorrow;
 6 fair to say?
 7 A. If it's a hundred percent occupied, also.
 8 You're not a hundred percent occupied so there would
 9 be a difference there. If you're 95 percent, it
 10 would be less than the market rent, or potential.
 11 You have to subtract your vacancies. If you go on
 12 down the "Income" column, you see where he
 13 subtracted the vacancies.
 14 Q. And so this -- the -- the chart -- the
 15 difference would represent both unoccupied units,
 16 right?
 17 A. If you go to September and vacancies and
 18 look at August, you'll see a big jump because of the
 19 storm in vacancies.
 20 Q. And we're talking about vacancies, we're
 21 talking about the amount of money that is lost due
 22 to vacancies?
 23 A. Absolutely. And you'll notice 34,000 when
 24 he had that -- that chart there showed you at 58, I
 25 believe. So why is it not 58 and why is it only 34?

52 (Pages 202 to 205)

Ralph Brockman 1/19/2010

Page 206

1 Well, the answer is probably you've got \$24,000
2 worth of tenants on the second floor there at
3 Compass Pointe that are living in those horrible --
4 you know, but be that as it may, it indicates there
5 are some tenants on that second floor in September,
6 October, November, and December. And I can't quite
7 explain -- my brother can do this tomorrow -- the
8 loss of rent proceeds why it is shown as credit
9 here, you know, in parenthesis rather than a plus.
10 You know, it's accounting deal.

11 Q. You're not sure why that it's showing up
12 like that?

13 A. I don't know why it's shown. I guess the
14 bottom line it comes out the same. If you look at
15 net rental income, it's 635,988. Last years it was
16 633,533. You know, so it's not but a \$2,400
17 increase from one year over the other. And that's
18 including the loss of rent apparently collected from
19 Nationwide. But then the expenses are itemized
20 below or right down the line, virtually every one of
21 them.

22 Q. So just back up a second. So this
23 document shows that at the end of 2005, plaintiffs
24 had collected \$635,998 in rental income, including
25 the loss of rent insurance proceeds from Nationwide,

Page 207

1 right?

2 A. Yes, sir.

3 Q. And that's a little less than \$2,000 more
4 total than the rent that they had the prior year
5 2004?

6 A. Yes.

7 Q. So then we keep working down here.
8 There's other income that's listed here?

9 A. Yes, sir.

10 Q. And that is income that actually was
11 earned and received, right?

12 A. Oh, yes, sir. It's other income. It's
13 broken out. It shows you interest all the way down
14 the line. Methods of collecting income. Then you
15 get into expenses. You subtract two and get bottom
16 line.

17 Now, if you'll look also and one thing
18 here that might distort the figure some and help
19 this year. Look at interest on the mortgage.
20 September, October, November, December, it reflects
21 what we did in discovery today that we -- we stopped
22 making mortgage payments in September.

23 Q. Can you point to that line?

24 A. It would be the next page where my
25 handwriting -- look at interest on the mortgage.

Page 208

1 Q. Yes.

2 A. Okay.

3 Q. It shows no payments on interest on the
4 mortgage on September, November, December.

5 A. No interest -- no interest in September,
6 October, November, December. And that was about
7 \$11,018 a month more the previous month. Both 11.
8 So if you -- if you extend that out 11 a month for
9 four months, you can now say that this probably
10 44,000 overstated because it's not reflecting
11 interest. So that's a correction I should make to
12 this 12-month trading reserve deal. It's overstated
13 about 44,000 because we did not show interest. We
14 didn't pay it. That's why it wasn't shown. The
15 statement is accurate, but the valuation is off
16 because I missed about 44,000 in income.

17 Q. So in other words, the 201,348 should
18 actually be 40 something thousand less?

19 A. Forty-four less. I'm doing mine now, not
20 yours. But that's -- that puts it at 157,348. So
21 if you use my formula, and this is my corn formula.
22 If you use 10 years income times 157,348, then that
23 valuation becomes 1,573,480, not the 2 million.

24 Q. I think we'll need to mark a copy of what
25 you've just written as 484.

Page 209

1 (Exhibit 484 marked for identification.)

2 A. You want to exchange?

3 Q. We'll make another copy of it at the end.
4 MR. GAUDET: No more writing.

5 Q. That's fine. I mean, if you want to keep
6 writing on what's marked as 484.

7 A. I don't need to write anymore. I just
8 corrected it right here. I'll circle the interest,
9 though.

10 Q. So what you said is that it's one million.
11 Can you read the number?

12 A. I judge the interest expense budgeted at
13 11,000 a month because the previous two months was
14 very, very close to 11,000. And four times 11 is
15 44,000. I then subtracted 44,000 from the 201,348.
16 I got 157,348. And then I take ten year times that
17 and it becomes 1,573,480 rather than ten times at
18 201 is ten times 157,348.

19 Q. You have written on here -- the idea that
20 you have in your mind here is that you're trying to
21 convey what you say is, quote, "the value if kept as
22 investment going forward"?

23 A. Yes, sir.

24 Q. What you simply do is multiply this year
25 to date figure, which is now downward adjusted by

53 (Pages 206 to 209)

Ralph Brockman 1/19/2010

Page 210

1 44,000, by 10 years? Simple as that, right?
 2 Nothing else?
 3 A. That's correct.
 4 Q. And how do you come up with the 10 years?
 5 A. Just, you know.
 6 Q. I don't know. You're going to have to
 7 tell me how you come up with the 10 years.
 8 A. It's -- nobody is going to sell a property
 9 that's making 157,000 a year unless they get a
 10 profit. And if you figure the return investment for
 11 investor, if he pays you for that income stream, you
 12 following me, then if he got 157 on -- he's getting
 13 a 10 percent return on investments. He's
 14 furthermore sheltered by depreciation. So he's
 15 getting a pretty good return on investment when it's
 16 10 percent, and most of that is tax free. And
 17 that's how I value in most cases the properties.
 18 They will tend to trend income and trend the
 19 expenses. And since your biggest expense is
 20 mortgage interest and it more or less stays the
 21 same, then your property gets better and better as
 22 years goes on. Because of inflation, your income
 23 goes up at a faster rate than expenses. So he may
 24 start out at 10 percent, but if he can gain just a
 25 half a percent a year. By trending expenses greater

Page 211

1 than the -- I mean, income greater than expenses,
 2 then his 10 goes to 10.5, goes to 11, 11.5. And so
 3 that's how people that have properties get wealthy.
 4 MR. GILMORE: We'll go off record now.
 5 VIDEOGRAPHER: Off the record at 3:37.
 6 End of tape five.
 7 (Off the record.)
 8 VIDEOGRAPHER: Beginning tape six. On the
 9 record at 3:38.
 10 Q. (By Mr. Gilmore) Let me ask you a few
 11 questions, sir, still on Defense Exhibit 483 and
 12 your handwritten calculation on this income
 13 statement of what you think plaintiffs could have
 14 generated as investment, I guess, income going
 15 forward.
 16 The lump sum figure, which after the
 17 adjustment we talked about during this deposition,
 18 would bring you down to 1.5 million approximately,
 19 1.57 million, that is not capitalized or discounted
 20 in any way, correct?
 21 A. That's correct. An appraiser may -- he
 22 will take an income approach and they take calls and
 23 he'll come up with the number and a cap rate. And
 24 he -- and that's the way appraisers do. He'll say,
 25 "Well, I've got to see what are interest rates

Page 212

1 today." And he uses a certain cap rate.
 2 Q. And in fact, if tomorrow someone wrote
 3 plaintiffs check for \$1.57 million, that would be --
 4 that would be a windfall because you'd be able to
 5 invest that and earn more over 10 years than the
 6 number we're talking about here, right?
 7 A. Right now you couldn't. I mean, right now
 8 I can't get bank to pay me about two percent. So
 9 that's what make income properties very attractive.
 10 At times, when -- when banks pay you two percent and
 11 you can make 10 on this property, then it's a --
 12 it's a better investment for cash.
 13 Q. You would agree to discount a future
 14 revenue stream, which this is, revenues over 10
 15 years, income over 10 years, you have to use a
 16 discount rate and discount it to present value,
 17 right? You understand that, right, sir?
 18 A. Yes. I've done that. I've done that in
 19 my calculation. Now, we'll see if my counsel gets
 20 an appraiser and see what he thinks that you would
 21 do. Yes, if I took 1.573 invest it, I would get
 22 two percent. Why would I sell the property? And
 23 it's taxable at two percent. And that's -- that's
 24 why I still own 45 properties. You just don't sell
 25 them because by the time you pay the tax and

Page 213

1 reinvest the money, you go backwards. That's why
 2 you accumulate so many properties, why you don't
 3 sell them.
 4 Q. You don't know whether the proper discount
 5 rate?
 6 A. No, but --
 7 Q. You find percent, half a percent, right?
 8 You would need an appraiser to get that?
 9 A. That's --
 10 Q. You would have to ask expert to come up
 11 with that?
 12 A. And he would use a cap rate. But I'm not
 13 gone rob -- rob over years, preview about a 10-year
 14 return on any property. It's done well for me. And
 15 if I can make 10 percent on every property, I'm kind
 16 of happy it gets better.
 17 Q. Plaintiffs also sold this property and
 18 made money back to the partners in the partnership
 19 after paying off their mortgage, right?
 20 A. I don't know how much it showed that the
 21 acquisition price at a million -- I think a million
 22 seven 970 or so. And we sold it for, what was it,
 23 two million seven.
 24 Q. That's right.
 25 A. So that's about 700,000 profit over, what,

54 (Pages 210 to 213)

Ralph Brockman 1/19/2010

Page 214

1 10 years.
 2 Q. You don't know -- that hasn't been
 3 factored into this amount at all, has it?
 4 A. No, no.
 5 Q. And you'd have to factor that in in order
 6 to get a fair amount, you know, regardless of
 7 whatever kind of discount rates or rates of return
 8 you're using to modify these figures, right, sir?
 9 A. Right.
 10 Q. That's province of an expert such as an
 11 appraiser or a accountant or an economist; fair to
 12 say?
 13 A. Yes, sir.
 14 Q. And this is also based on -- actually,
 15 these 10-year revenue projection or income
 16 projection that you've come up here doesn't vary
 17 occupancy or rent rates according to changes in the
 18 real estate market, right?
 19 A. I didn't understand that question.
 20 Q. Sure. Well, I think you testified about
 21 this in your deposition. Real estate market goes
 22 up, then it goes down, right?
 23 A. Yes, sir.
 24 Q. And those kind of fluctuations cause
 25 changes in demand and occupancy and the amounts of

Page 215

1 rent you can charge tenants; fair to say? All those
 2 things, right?
 3 A. Yes, sir.
 4 Q. And none of those changes have been baked
 5 in at all to this revenue projection at all, right?
 6 A. No, sir.
 7 MR. GILMORE: Let me -- let's go off the
 8 record for a second. I want to kind of go through,
 9 see what I have.
 10 VIDEOGRAPHER: Off the record at 3:43.
 11 (Off the record.)
 12 VIDEOGRAPHER: On the record at 3:48.
 13 Q. (By Mr. Gilmore) All right. Now, I'm
 14 going to hand this sticker. It's Defense
 15 Exhibit 485, which we're going to mark this list of
 16 handwritten notes.
 17 (Exhibit 485 - Handwritten Notes marked
 18 for identification.)
 19 Q. We'll make copies of that, but can you
 20 tell me what is on this list?
 21 A. Basically, it's questions that I could not
 22 answer when you asked them. Some were answered
 23 later that I thought my brother could help -- be
 24 helpful with. So I put, "Bill Questions: Proceeds
 25 from insurance tendered to LNR and if so when after

Page 216

1 receipt." I think we discovered that -- that the
 2 big payment for loss that Nationwide made for loss
 3 of property was tendered to them, but I don't think
 4 we established whether loss of rents were, and I
 5 don't believe it was.
 6 Q. We can ask him about that tomorrow.
 7 A. We can ask him about that. "Were loss of
 8 rents deposited paid LNR?"
 9 And something about that Leah Solomon
 10 wrote Nationwide Insurance, but I think that got
 11 answered. "Who is Brett Furr?" It got answered.
 12 "Did the upstairs ever get condemned?" I
 13 got that as a question mark for him.
 14 I've got a note to him, "Don't forget to
 15 ask for the 12-month trading income," which we've
 16 already gone over the six-month rent loss was there
 17 another update. You remember it went from 86 up to
 18 91,000.
 19 And there was all of the -- the check
 20 register questions that you had, five or six of
 21 them. I asked who they are. The check register
 22 from 9/1/05 to 10/27/06. And then the big one is
 23 Interrogatory 25, which was reconciling the -- the
 24 rent roll, the 58,000, to the loss of rent, which
 25 was some 15,000 plus. So I'm hoping Bill can shed

Page 217

1 light on this.
 2 And I'll give him these exhibits tonight
 3 to go over and have him bring them as you requested
 4 since you don't have another copy tomorrow for the
 5 depositions. Maybe he can shed light on some of
 6 these. But that's -- that's what this -- my
 7 handwriting is.
 8 Q. And that's fine. We'll make copy of that.
 9 I'd like to have the -- the original given to the
 10 court reporter. We'll make a photocopy of that for
 11 everyone.
 12 I don't have any questions for you at this
 13 time, Mr. Brockman.
 14 A. What about the changes I made to trading?
 15 Q. I appreciate that. Let's mark that as --
 16 MR. GAUDET: I think you'd marked it
 17 again.
 18 MR. GILMORE: Oh, did we mark it again?
 19 MR. GAUDET: About a couple of weeks.
 20 MR. GILMORE: Yeah. Oh, you're right.
 21 It's also double marked as 484. So we'll -- we'll
 22 mark that as 44 and we'll have copies of that.
 23 MR. GAUDET: But I don't think you have
 24 copy of either of these.
 25 MR. GILMORE: Yeah. We'll make -- we'll

55 (Pages 214 to 217)

Ralph Brockman 1/19/2010

Page 218

1 make copies and then attach the originals to the
 2 court reporter's transcript.
 3 A. But I need Bill's -- one back for Bill.
 4 Q. (By Mr. Gilmore) Yeah, yeah. We'll do
 5 that now or wait a minute. I don't have any
 6 questions -- more questions for you at this time,
 7 Mr. Brockman.
 8 A. I'm available tomorrow. I don't have
 9 anything to do, but I don't want to come back.
 10 MR. GAUDET: Let's go off the record.
 11 VIDEOGRAPHER: Off the record at 3:51.
 12 (Off the record.)
 13 VIDEOGRAPHER: On the record at 3:59.
 14 MR. GAUDET: No questions.
 15 VIDEOGRAPHER: Off record at 3:59. End of
 16 deposition.
 17 (Off the record.)
 18 (Time noted: 3:59 p.m.)
 19 (SIGNATURE / NOT WAIVED)
 20 Original: Robert Gilmore, Esq.
 21 Copy: Nathan M. Gaudet, Esq.
 22
 23
 24
 25

Page 220

1 CERTIFICATE OF COURT REPORTER
 2 I, Robin Burwell, Court Reporter and
 3 Notary Public, in and for the State of Mississippi,
 4 hereby certify that the foregoing contains a true
 5 and correct transcript of the testimony of Ralph
 6 Brockman, as taken by me in the aforementioned
 7 matter at the time and place heretofore stated, as
 8 taken by stenotype and later reduced to typewritten
 9 form under my supervision by means of computer-aided
 10 transcription.
 11 I further certify that under the authority
 12 vested in me by the State of Mississippi that the
 13 witness was placed under oath by me to truthfully
 14 answer all questions in the matter.
 15 I further certify that I am not in the
 16 employ of or related to any counsel or party in this
 17 matter and have no interest, monetary or otherwise,
 18 in the final outcome of this matter.
 19 Witness my signature and seal this the
 20 22nd day of January, 2010.
 21
 22

ROBIN G. BURWELL

My Commission Expires:

Page 219

1 CERTIFICATE OF DEPONENT
 2 DEPONENT: Ralph Brockman
 3 DATE: January 19, 2010
 4 CASE STYLE: Sunquest Properties, et al v.
 5 Nationwide, et al
 6 ORIGINAL TO: Mr. Gilmore, Esq.
 7 I, the above-named deponent in the
 8 deposition taken in the herein styled and numbered
 9 cause, certify that I have examined the deposition
 10 taken on the date above as to the correctness
 11 thereof, and that after reading said pages, I find
 12 them to contain a full and true transcript of the
 13 testimony as given by me.
 14 Subject to those corrections listed below,
 15 if any, I find the transcript to be the correct
 16 testimony I gave at the aforesaid time and place.
 17 Page Line Comments
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 _____
 26 This the ____ day of _____, 2010.
 27 _____
 28 State of Mississippi
 29 County of _____
 30 Subscribed and sworn to before me, this the
 31 ____ day of _____, 2010.
 32 My Commission Expires:
 33 _____
 34 Notary Public
 35

56 (Pages 218 to 220)

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